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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION 6

1201 Elm Street, Suite 500
Dallas, Texas 75270

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

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Gas Innovations Inc.,

Docket No. CAA-06-2022-3362

Respondent.

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Gas Innovations Inc. (“Respondent” or “Gas Innovations”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68 promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to

Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Gas Innovations, a company formed in the state of Texas and conducting business in the state of Texas.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate a list of regulated 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. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements

for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. 1910.119.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the

Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$51,796 for violations that occur after November 2, 2015, and are assessed after January 12, 2022.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as 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.

15. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section

112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

16. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulation at 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

19. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent is the owner and operator of a facility located at: 18005 E. Hwy 225, La Porte, TX 77571 (the “Facility”).

21. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an inspection of the Facility between March 29-31, 2022, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Inspection”).

22. On May 11, 2022, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter (“NOPVOC”). On June 3, 2022, the EPA responded to the

documentation and information received from Respondent as a result of the NOPVOC and articulated the EPA's position concerning Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r). On June 15, 2022, Respondent informed the EPA of Respondent's agreement to evaluate and resolve potential violations of CAA Section 113(d), 42 U.S.C. § 7413(d) pursuant to an Administrative Compliance Order, and to resolve Respondent's liability for federal civil penalties for alleged violations herein pursuant to a Consent Agreement and Final Order.

23. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

24. The Respondent is a wholesale gas supplier. Operations include the filling, storing, and transfer of industrial gases. The facility receives bulk gases in tanker trailers and then transfers the gases to storage tanks before again transferring them to smaller containers or back into tanker trailers for wholesale. Additionally, the facility receives nearly empty bulk trailers and containers that must be emptied before refilling. Some of the containers are refurbished through welding, sand blasting, and painting before being put back into circulation. The two main operations at the facility are the high-pressure operations and the low-pressure operations. Each of these processes at the Facility meet the definition of "process" as defined by 40 C.F.R. § 68.3.

25. Ethane, Methane, Ethylene, Propylene, Propane, 1-Butene, Butane, 2-Methylpropane, Isobutane, and Isopentane are each a "regulated substance" pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for Ethane, Methane, Ethylene, Propylene, Propane, 1-Butene, Butane, 2-Methylpropane, Isobutane, and Isopentane, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

Hydrogen chloride (Anhydrous) is a toxic chemical with a threshold quantity, as listed in 40 C.F.R. § 68.130, of 5,000 pounds.

26. Respondent has greater than a threshold quantity of Ethane, Methane, Ethylene, Propylene, Propane, 1-Butene, Butane, 2-Methylpropane, Isobutane, Isopentane, and Hydrogen chloride (Anhydrous) (“Regulated Substances”) in a process at the Facility meeting the definition of “covered process” as defined by 40 C.F.R. § 68.3.

27. From the time Respondent first had on-site greater than a threshold quantity of the Regulated Substances in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondent first had on-site greater than a threshold quantity of the Regulated Substances in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because, pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System code 42471 and 42469.

EPA Findings of Violation

29. The facts stated in the foregoing Paragraphs 19 – 28 are herein incorporated.

30. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Management

31. The regulation at 40 C.F.R. § 68.15(a)(b)(c) requires: (a) the owner or operator of a stationary source with processes subject to ... Program 3 shall develop a management system to

oversee the implementation of the risk management program elements; (b) the owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements; and (c) when responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented, and the lines of authority defined through an organization chart or similar document.

32. Respondent failed to develop a management system to oversee the implementation of the risk management program; assign a qualified person with the responsibility of development, implementation, and integration of the risk management program; and document lines of authority through an organization chart or similar document.

33. Respondent's failure to develop a management system for the risk management program; assign a qualified person to develop, implement, and integrate the risk management program; and document lines of authority pursuant to 40 C.F.R. § 68.15(a)(b)(c) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Process Safety Information

34. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

35. Respondent failed to document that covered process equipment located in the low-pressure dock area and the high-pressure area, including the hydrogen chloride refilling area,

complies with recognized and generally accepted good engineering practices (RAGAGEP).

36. Respondent's failure to document that covered process equipment complies with RAGAGEP in accordance with 40 C.F.R. § 68.65(d)(2), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Process Hazard Analysis

37. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(a), the owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analysis based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 C.F.R. 1910.199(e) are acceptable as initial process hazards analyses. These process hazards analyses shall be updated and revalidated, based on their completion date.

38. Respondent failed to conduct an initial process hazard analysis on or before its startup of operations in the year 2003, and to perform any subsequent update or revalidation of its process hazard analysis every five years, which should have occurred in years 2008, 2013, and 2018.

39. Respondent's failure to conduct an initial process hazard analysis and subsequently

to perform any update or revalidation of the process hazard analysis in accordance with 40 C.F.R. § 68.67(a), as required by 40 C.F.R. § 68.12(d)(3) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 – Operating Procedures

40. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.69(c) requires that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

41. Respondent failed to certify annually, beginning with its startup of operations in 2003, that its operating procedures were current and accurate.

42. Respondent's failure to annually certify its operating procedures in accordance with 40 C.F.R. § 68.69(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Training

43. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.71(b) requires that refresher training shall be provided at least every three years, and more often, if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation

with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

44. Respondent failed to provide documentation of refresher training for two of its four covered process operators.

45. Respondent's failure to provide documentation, and thus failure to certify the training for two of its employees on emergency operations prior to being involved in operating a process pursuant to 40 C.F.R. § 68.71(a), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6 – Mechanical Integrity

46. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. §§ 68.73(d)(4) the owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

47. Respondent provided general maintenance logs for seven (7) pressure vessels located in the low-pressure dock area from the years 2019, 2020, 2021, and 2022, but failed to provide documentation of inspection or tests conducted on the seven (7) pressure vessels to include: date of the inspection or test, the name of the person who performed the inspection or test, the identification of the pressure vessel on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test in

accordance with any RAGAGEP. The applicable RAGAGEP includes the *American Petroleum Institute (API) 510, Pressure Vessel Inspection Code: In-service Inspection, Rating, Repair, and Alteration, 10 Edition, May 2014.*

48. Respondent's failure to provide documentation of inspections and tests, and thus failure to certify that the inspections and tests occurred pursuant to 40 C.F.R. § 68.73(d), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7 – Pre-startup Review

49. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.77(a) requires that the owner or operator perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

50. Respondent failed to conduct a pre-startup safety review for any of its management of changes that affected a covered process.

51. Respondent's failure to conduct a pre-startup safety review for management of changes that affected its covered processes in accordance with 40 C.F.R. § 68.77(a), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 8 – Compliance Audit

52. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements

of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.79(a), the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

53. Respondent failed to conduct risk management program compliance audits. Respondent had conducted internal audits in the years 2017, 2018, and 2019, and a process safety management audit was conducted in the year 2021, but not in accordance with 40 C.F.R. § 68.79(a).

54. Respondent's failure to conduct risk management program compliance audits in accordance with 40 C.F.R. § 68.79(a), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 9 – Employee Participation

55. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.83(b), the owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

56. Respondent failed to provide a written employee participation plan on how consultation with its employees is conducted regarding the conduct and development of process hazard analyses and access to such documentation.

57. Respondent's failure to provide a written employee participation plan that meets the requirements under 40 C.F.R. § 68.83(b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 10 – Emergency Response Coordination Activities

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

59. Respondent failed to provide documentation that it had coordinated with local authorities regarding its emergency response coordination activities.

60. Respondent's failure to provide documentation that it coordinated with local authorities regarding its emergency response coordination activities pursuant to 40 C.F.R. § 68.93(c) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

61. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of the civil penalty as stated herein;
- d. consents to the performance of the Supplemental Environmental Project (SEP) set forth herein;
- e. consents to the issuance of any specified compliance or corrective action order;
- f. consents to any conditions specified herein;
- g. consents to any stated Permit Action;
- h. waives any right to contest the allegations set forth herein; and

i. waives its rights to appeal the Final Order accompanying this Consent Agreement.

62. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

63. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

64. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twenty-Four Thousand Seventy-Three Dollars (\$24,073.00).

65. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

66. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Tony Robledo
Enforcement and Compliance Assurance Division
Air Enforcement Branch

U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
Robledo.Tony@epa.gov

67. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

68. Respondent shall implement a supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvement. The SEP involves the purchase and installation of a Hydrogen Chloride Gas Detector and an LPG Gas Detector to integrate into the facility's existing fire alarm system. The equipment to be purchased and installed and Respondent's costs of performing the SEP are described in more detail in Attachment A to this CAFO. The equipment shall be installed no later than twelve (12) months from the effective date of this CAFO.

69. The SEP advances at least one of the objectives of 112(r) of the CAA, 42 U.S.C. § 7412(r), by preventing the accidental release of regulated substances and minimizing the consequences of any such release through the operation of new gas detectors to allow for early

leak detection. The SEP is not inconsistent with any provision of 112(r) of the CAA, 42 U.S.C. § 7412(r). The SEP relates to the alleged violation(s) and is designed to reduce the adverse impact to public health and/or the environment to which the alleged violations contribute, as well as the overall risk to public health and/or the environment potentially affected by the alleged violations. Specifically, the SEP will enable Gas Innovations to continuously monitor its HCl and LPG process areas and to detect early and respond quickly if a detectable release occurs. This will enable personnel to know whether hazards are present in the area before entering and will enable the facility to quickly and effectively respond to any leaks or vapors to prevent both onsite and offsite exposures that could otherwise impact public health and/or the environment.

70. The Respondent is responsible for the satisfactory completion of the SEP described in the foregoing Paragraph 68 and Attachment A. The total expenditure for the SEP described in Paragraph 68 shall be no less than **One Hundred Twenty Thousand Dollars** (\$120,000). The Respondent hereby certifies that the cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and that the Respondent in good faith estimates that the cost to implement the SEP is \$120,000. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

71. The Respondent hereby certifies that as of the date of this CAFO, the Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP is not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP, and that

the Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

72. The Respondent also certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 68 and Attachment A.

73. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEP 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 against Gas Innovations Inc. taken on behalf of the EPA to enforce federal laws."

74. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

SEP Completion Report

75. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP under this CAFO. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- E. A description of the environmental, emergency preparedness, and/or public health

benefits resulting from implementation of the SEP.

The Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO subject to stipulated penalties pursuant to Paragraphs 80E.

76. 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.

77. The Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

78. After receipt of the SEP Completion Report described in Paragraph 75 above, EPA will notify the Respondent, in writing: (a) regarding any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) to indicate that EPA concludes that the SEP has been completed satisfactorily; or (c) to determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraphs 80-84 below.

79. If EPA elects to exercise option (a) in Paragraph 78 above, i.e., if the SEP Report is

determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, then EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 78 within fifteen (15) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA necessary to comply with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 80-84 herein.

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount

80. In the event that the Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 68 and Attachment A of this CAFO and/or to the extent that the actual expenditures for the SEP does not equal or exceed the cost of the SEP described in Paragraph 70 above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, if the SEP has not been satisfactorily completed within 12 months of the Effective Date of the CAFO and Respondent has not made good faith and timely efforts to complete the project satisfactorily, pursuant to this CAFO, the Respondent shall pay a stipulated penalty to the United States in the amount of \$120,000. Payment by Respondent of the stipulated penalty pursuant to

Paragraph 80A. shall constitute full performance of the SEP and shall excuse any other stipulated penalty arising under this CAFO.

B. If the SEP is not completed in accordance with Paragraph 68 and Attachment A, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEP is completed in accordance with Paragraph 68 and Attachment A, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty, along with accrued interest, to the United States that shall reflect, dollar for dollar, the difference between the cost expended on the SEP and the agreed cost of \$120,000.

D. If the Respondent fails to timely complete the SEP (not including the SEP Completion Report) for any reason, the Respondent shall pay stipulated penalties as follows, and combined stipulated penalties for Paragraphs 80.D and 80.E shall not exceed \$120,000:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and beyond	\$ 2,500

E. For failure to submit the SEP Completion Report required by Paragraph 75 above, the Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted, and combined stipulated penalties for Paragraphs 80.D and 80.E shall not exceed \$120,000.

81. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole determination of EPA.

82. Stipulated penalties for Paragraphs 80.D and 80.E above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity and combined stipulated penalties for Paragraphs 80.D and 80.E shall not exceed \$120,000.

83. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraphs 65-66 herein.

84. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

Dispute Resolution

85. If the Respondent objects to any decision or directive of EPA, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Chief, Chemical Accident Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1201 Elm St, Suite 500
Dallas, TX 75270-2101

Chief, RCRA & Toxics Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1201 Elm St., Suite 500
Dallas, TX 75270-2101

86. The Chemical Accident Enforcement Section Chief (Chief) or his designee, and the

Respondent shall then have an additional fifteen (15) calendar days from receipt by EPA of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Chief and the Respondent, the agreement shall be reduced to writing and signed by the Chief and the Respondent and incorporated by reference into this CAFO.

87. If no agreement is reached between the Chief and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division (Division Director) or his designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

Notification

88. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Tony Robledo
 Enforcement and Compliance Assurance Division
 Air Enforcement Branch
 U.S. Environmental Protection Agency, Region 6

1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101

Respondent: Patrick Larkin
Member, Business Unit Leader
Environment, Energy & Natural Resources Practice
Clark Hill
901 Main Street, Suite 6000
Dallas, TX 75202

Modification

89. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of EPA and Respondent, and such modification or amendment being filed with the Regional Hearing Clerk.

Termination

90. At such time as Respondent believes that it has complied with all terms and conditions of this CAFO, Respondent may request that EPA advise whether this CAFO has been satisfied and terminated. EPA will respond to said request as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

No EPA Liability

91. Neither EPA nor the United States Government shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns or contractors in carrying out activities pursuant to this CAFO, nor shall the EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out

activities pursuant to this CAFO.

Effect of Settlement and Reservation of Rights

92. Full payment of the penalty proposed in this Consent Agreement shall resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

93. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

94. Respondent certifies by the signing of this Consent Agreement that, to the best of its knowledge, it is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), save and except as reflected in the Administrative Order on Consent, Docket No. CAA-06-2022-3363, and in the audit report to be prepared pursuant to the Administrative Order on Consent. Fulfillment of the terms of the Administrative Order on Consent is intended to bring Respondent into full compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r). The requirement by EPA that Respondent perform the terms of the Administrative Order on Consent is intended to constitute diligent prosecution of the claims alleged in this CAFO and in the Administrative Order on Consent.

95. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

96. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

97. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

98. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

99. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

100. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the provisions of this Consent Agreement and Final Order which by their terms apply to such persons.

101. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: Elizabeth George at George.Elizabeth.A@epa.gov

To Respondent: Chris Brandt at *cbrandt@gasinnovations.com*

With a copy to: Patrick Larkin at *plarkin@clarkhill.com*; and
Andrew Kaplan at *AKaplan@Kaplan-Lawfirm.com*

**RESPONDENT:
GAS INNOVATIONS INC.**

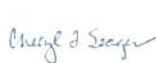
Date: 10-13-2022


Signature

CHRISTOPHER BRANDT
Print Name

VICE PRESIDENT OF OPERATIONS
Title

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**



Digitally signed by CHERYL
SEAGER
Date: 2022.10.14 10:20:18
-05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

THOMAS
RUCKI

Digitally signed by THOMAS RUCKI
DN: cn=CES, ou=U.S. Government, ou=Environmental
Protection Agency, c=THOMAS RUCKI,
0.9.2342.19200300.100.1.1+68001003655804
Date: 2022.10.17 09:02:14 -0400

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

George.Elizabeth.A@epa.gov

Copy via Email to Respondent:

cbrandt@gasinnovations.com

With a copy to: Patrick Larkin at *plarkin@clarkhill.com*; and

Andrew Kaplan at *AKaplan@Kaplan-Lawfirm.com*

Copy via Email to Regional Hearing Clerk:

Vaughn.lorena@epa.gov

**ELIZABETH
GEORGE**

Digitally signed by ELIZABETH
GEORGE
Date: 2022.10.14 10:26:55
-05'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6