

# City of Fall River Massachusetts

## Office of the City Clerk

**ALISON M. BOUCHARD**  
CITY CLERK

**NOVEMBER 8, 2013**

**INÊS LEITE**  
ASSISTANT CITY CLERK

### MEETINGS SCHEDULED FOR NEXT WEEK

TUESDAY, NOVEMBER 12, 2013

#### 5:30 P.M. COMMITTEE ON FINANCE

1. Transfers and appropriations (see # 1 below)
2. \*Administrator of Community Utilities re: Notice of Violation and E.P.A. Administrative Consent Order (Referred 10-15-13)
3. Discussion with Corp. Counsel and Administrator of Community Utilities re: acquisition of 0 Hancock Street (see # 3 below)
4. Discussion re: resolutions for designation of economic opportunity area for Klear Vu as well as TIF agreement and designation of economic opportunity area for the Walter A. Furman Company (see #2 below)

#### AGENDA

#### 7:00 P.M. REGULAR MEETING OF THE CITY COUNCIL

##### PRIORITY MATTERS

1. \*Transfers and appropriations
2. \*Mayor and resolutions:
  - a. Klear Vu – Designation of economic opportunity area
  - b. Walter A. Furman Company – TIF agreement and designation of economic opportunity area

##### PRIORITY COMMUNICATIONS

3. \*Corporation Counsel and order for the acquisition of 0 Hancock Street
4. \* Retirement Board 2014 budget totals

##### COMMITTEE REPORTS

###### Committee on Ordinances and Legislation recommending:

###### First reading:

5. Proposed Ordinance – Traffic, miscellaneous

###### First reading, as amended:

6. Proposed Ordinance – Submission of enterprise budgets, proposed fee increases or creation of new fees

###### Adoption:

7. \*Order – Acceptance of M.G.L. C. 41, S.108I, Policemen assigned to photographic or fingerprinting identification work

###### Grant leave to withdraw:

8. Resolution – Prohibiting dogs from cemeteries and making Cemetery Division independent from Board of Park Commissioners

##### ORDINANCES – None

##### RESOLUTIONS

9. \*Water Department consider charging one base meter fee per residence
10. \*Traffic Department review traffic patterns and road conditions near new Super Walmart and Sam's Club
11. \*Director of Community Maintenance be invited to Comm. on Finance meeting to provide update on Pilot yard waste collection program

##### CITATIONS

12. Joan Menard – 2013 outstanding citizen of the year

**ORDERS – HEARINGS FOR TONIGHT**

Auto repair shop license:

13. Brandan Cyr, 385 President Avenue d/b/a BC Auto Repair located at 771 Rodman Street
14. Jamil A. Boutros, 73 Albion Street d/b/a B&K Auto Sales located at 1596 Pleasant Street
15. Wayne Senechal, 37 Meadow Street d/b/a Wayne's Auto & Performance located at 122 Lowell Street

Second hand article store:

16. BP Auto Service, Inc. located at 150 Plymouth Avenue
17. Robert W. Janelle d/b/a Our Place located at 156 Tripp Street
18. Victor Osorio d/b/a Cyber Cell Electronics Shop located at 532 South Main Street

Joint pole locations:

19. Central Street – Removal of seven (7) pole locations

Underground conduit:

20. South Main Street

**ORDERS – HEARINGS TO BE SCHEDULED** – None

**ORDERS – NO HEARING REQUIRED** – None

**ORDERS – MISCELLANEOUS**

21. Police chief's report on licenses
22. Auto repair shop renewals
23. Auto body shop renewals
24. Revocation of auto body shop license no. 135 for Daniel Aguiar, 59 Alsop Street d/b/a Advance Collision Center located at 566 Rodman Street at license holder's request

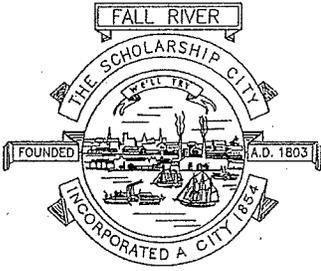
**COMMUNICATIONS – INVITATIONS – PETITIONS**

25. \*Claims
26. Planning Board minutes for September 19, 2013
27. Zoning Board of Appeals minutes for September 19, 2013

**BULLETINS – NEWSLETTERS – NOTICES** – None

  
Assistant City Clerk

*Finance 2*



**City of Fall River  
Massachusetts**  
Department of Community Utilities  
WATER • SEWER

**RECEIVED**

2013 OCT -8 A 11: 54

**WILLIAM A. FLANAGAN**  
*Mayor*

October 3, 2013 CITY CLERK \_\_\_\_\_ TERRANCE SULLIVAN  
FALL RIVER, MA Administrator

Honorable City Council  
City of Fall River  
One Government Center  
Fall River, MA 02722

Dear Honorable Councilors:

Please find enclosed a copy of a Notice of Violation and Administrative Consent Order as issued to the City by the US Environmental Protection Agency for your information.

We are working with EPA to update our Risk Management Plan (RMP) for the Water Treatment Facility. The systems are operating as designed and there have been no functional issues. This order relates to documentation compliance which we shall address.

We will continue to work with EPA to resolve the matter. Please let me know if you need further information.

Sincerely,

Terrance J. Sullivan  
Administrator of Community Utilities

Attachments

**CITY OF FALL RIVER  
IN CITY COUNCIL**

**OCT 15 2013**

*Referred to the  
Committee on Finance*

*74  
mailed & e-mailed  
to all Councilors*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

September 27, 2013

Attorney Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, Massachusetts 02722

RE: In the Matter of City of Fall River, Massachusetts  
Executed Administrative Order on Consent

Dear Attorney DiOrio:

Enclosed please find the executed Administrative Order on Consent concerning the RMP issues at the Fall River water-treatment plant.

Your consideration and cooperation in bringing this to a swift and amicable conclusion is greatly appreciated. I look forward to working with Fall River as we move forward.

Please do not hesitate to call or contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven C. Schlang".

Steven C. Schlang

cc: Len Wallace, EPA  
Gregg Hunt, Compliance/Enforcement Chief  
MA-DEP Southeast Regional Office

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

In the Matter of:	)	
	)	
The City of Fall River, Massachusetts	)	<b>NOTICE OF VIOLATION AND ADMINISTRATIVE ORDER ON CONSENT</b>
Respondent	)	
	)	
	)	
	)	
Proceeding under Section 113(a) of the	)	
Clean Air Act, 42 U.S.C. § 7413(a).	)	
	)	

**I.      INTRODUCTION**

1.      The United States Environmental Protection Agency ("EPA") Region I issues this Notice of Violation ("NOV") and Administrative Order on Consent ("AOC") to the City of Fall River, Massachusetts ("Respondent") for the failure to review, update, and resubmit a Risk Management Plan ("RMP") at the Fall River Water Filtration Plant for the storage of chlorine, in violation of Section 112(r) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7412(r), and implementing EPA regulations set forth at 40 C.F.R. Part 68.

2.      The NOV and AOC are issued under the authority of Section 113 of the CAA, 42 U.S.C. § 7413. Specifically, Section 113(a)(3) of the CAA provides that EPA may issue an administrative order requiring compliance with the requirements or prohibitions of Subchapter I of the Act (which includes, *inter alia*, the requirements of Section 112(r)). In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), an order relating to a violation of Section 112 of the CAA, 42 U.S.C. § 7412, may take effect immediately upon issuance, and a copy of such an order must be

sent to the State air pollution control agency of any State in which the violation occurs.

## II. STATUTORY AND REGULATORY AUTHORITY

3. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of the accidental release of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the Act, 42 U.S.C. § 7412(r)(5), requires EPA to establish for each regulated substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effect to human health. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a RMP.

4. Under Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

5. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated RMP regulations, found at 40 C.F.R. §§ 68.1-68.220 ("Part 68"). Forty C.F.R. § 68.130 lists the regulated substances and their associated threshold quantities.

6. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that

has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates:

(a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

7. A "process" is defined by 40 C.F.R. § 68.3 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.

8. Each process in which a regulated substance is present in more than a threshold quantity (a "covered process") is subject to one of three risk management programs, whose eligibility requirements are set forth in 40 C.F.R. § 68.10. Program 1 is the least comprehensive and Program 3 is the most comprehensive.

9. Under 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain specified NAICS codes or subject to the OSHA process safety management ("PSM") standard set forth at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

10. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source implement the chemical accident prevention provisions of Part 68 to which it is subject and submit an RMP. The RMP documents compliance with Part 68. For

example, the RMP for a Program 2 process documents compliance with the elements of a Program 2 Risk Management Program, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart C (Program 2 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program). Additionally, 40 C.F.R. § 68.190(b) dictates that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update.

### **III. GENERAL ALLEGATIONS**

11. The City of Fall River is the current owner and operator of the Fall River Water Filtration Plant located at 1831 Bedford Street in Fall River, Massachusetts 02723 (the "Facility").

12. The Facility, which began operations in the mid 1970s, is a rapid sand filtration plant designed to produce potable drinking water for municipal distribution for use by the citizens of Fall River and three surrounding communities. Chlorine gas is used in the treatment process to ensure that no levels of bacteria are present that may pose problems to the public health, safety and welfare.

13. The Facility is located next to the North Wattupa Reservoir and, according to the Facility's 2004 RMP, a worst-case release of chlorine could have an off-site impact to schools, hospitals, and state forest land.

14. As a municipality, Respondent is a "person" within the meaning of

Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom a compliance order may be issued under Section 113(a) of the CAA, 42 U.S.C. § 7413(a).

15. The Facility is a "stationary source," as that term is defined in 40 C.F.R. § 68.3.

16. Respondent is the "owner or operator," as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

17. Chlorine is a regulated extremely hazardous substance listed under 40 C.F.R. § 68.130, having a threshold quantity of 2,500 pounds.

18. Chlorine is a toxic substance that is normally shipped and stored as a liquefied compressed gas. Chlorine gas is heavier-than-air, non-flammable, and a strong oxidizer. Chlorine causes respiratory tract burns if inhaled and causes burns to skin and eyes. Effects of inhalation or exposure range from chest pain, difficulty breathing, headaches, dizziness, hyperactivity, emotional disturbances, bluish skin color, and lung irritation to severe eye, nose, and respiratory distress. Inhaling high concentrations of chlorine gas can be lethal. The substance is highly reactive and will readily mix with other substances causing further hazards. Chlorine is highly corrosive in the presence of moisture.

19. The unanticipated emission of chlorine gas into the ambient air from the Facility would constitute an "accidental release," as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

20. The use, storage, manufacturing, handling or on-site movement of a regulated substance, in this instance chlorine, at the Facility is a "process," as defined by 40 C.F.R. § 68.3.

21. On June 18, 1999, Respondent submitted an initial Program 2 RMP for its use, storage, and handling of chlorine at the Facility (the "1999 RMP").

22. On June 18, 2004, Respondent submitted a required five-year updated RMP for its use, storage, and handling of chlorine at the Facility (the "2004 RMP").

23. According to the 1999 RMP and the 2004 RMP, the Facility used, stored, or handled up to 14,000 pounds of chlorine at those times.

24. EPA conducted a previously-announced inspection of the Facility on February 19, 2013 (the "Inspection"). Authorized EPA inspectors, the Fall River Fire Department Right-to-Know Officer, and Fall River's Director of Water Treatment and Resources were present during the Inspection. The Inspection was conducted to determine the Facility's compliance with Sections 302-312 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11002-11022, and Sections 112(r)(7) and 112(r)(1) of the CAA, 42 U.S.C. §§ 7412(r)(7) and 7412(r)(1), the RMP accident prevention program and the General Duty Clause, respectively.

25. At the time of the Inspection, the Facility had seven (7) two-ton cylinders of chlorine (weighing approximately 14,000 pounds), in a storage room (the "Chlorine Storage Room"). Chlorine is pumped from the chlorine storage room into the Chlorinator Room, where the chlorine is injected into the water treatment process. The EPA Inspection confirmed that the Facility continued to use, store, and handle approximately 14,000 pounds of chlorine on a routine basis.

26. Accordingly, chlorine is "used," "stored," and "handled" in a covered process at the Facility in an amount greater than the threshold amount under 40 C.F.R. § 68.130.

27. During the Inspection, EPA inspectors observed that a single, floor-level inlet ventilation port, which was the only source of fresh air supplied to the Chlorine Storage Room, was blocked with a fitted plywood cover, effectively blocking any fresh air from flowing into the room.

28. EPA Inspectors also noted the following issues, among others:

(a) The Director of Water Treatment and Resources ("Director"), who had managed the Facility since February 2, 2005, stated that he was not aware of any obligations under the RMP Program and consequently had not updated the RMP Program during his tenure as director.

(b) At the time of the inspection, there was no information available about a mechanical integrity/maintenance program for the chain hoist used to move chlorine cylinders. Additionally, information about the safety and functionality of chlorine detectors and analyzers was unavailable.

29. The endpoint for a worse case release of chlorine at the Facility is greater than the distance to a public receptor.

30. As the owner and operator of a stationary source that has more than the threshold amount of a regulated substance in a covered process, Respondent is subject to the RMP provisions of Part 68.

31. In particular, Respondent's storage and handling of chlorine is subject to the requirements of Program 2, in accordance with the requirements found in 40 C.F.R. § 68.10(c).

32. Pursuant to 40 C.F.R. § 68.190(b)(1), Respondent was required to review, update, and resubmit the Facility's RMP no later than June 18, 2009.

33. Respondent failed to review, update, and resubmit its RMP in 2009 or at any time since.

#### IV. NOTICE OF VIOLATION

34. Based on the Inspection and the foregoing findings, EPA is hereby providing Respondent with Notice of the following violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

##### A. FAILURE TO REVIEW, UPDATE AND RESUBMIT A RISK MANAGEMENT PLAN

35. The allegations in paragraphs 1 through 34 are incorporated by reference as if fully set forth herein.

36. Under 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source subject to Part 68 must comply with the requirements of 40 C.F.R. Part 68 and submit an RMP no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process. Sections 68.150-68.185 of 40 C.F.R. set out the required elements of the RMP. The RMP for a Program 2 process documents compliance with the elements of a Program 2 RMP, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart C (Program 2 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

37. Pursuant to 40 C.F.R. § 68.190(b)(1), Respondent was required to review,

update, and resubmit the Facility's RMP no later than June 18, 2009.

38. Respondent failed to review, update, and resubmit its RMP in 2009 or at any time since.

39. Respondent failed to review, update, and resubmit an RMP documenting the Facility's compliance with the elements of a Program 2 Risk Management Program for chlorine in 2009. See 40 C.F.R. § 68.170 for Program 2 prevention program information that must be included in the Facility's RMP.

40. By failing to review, update, and resubmit an RMP for chlorine from at least June 18, 2009 to the present, Respondent violated Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. §§ 68.12, 68.150, and 68.190.

**B. FAILURE TO HAVE A RMP MANAGEMENT SYSTEM**

41. The allegations in paragraphs 1 through 40 are incorporated by reference as if fully set forth herein.

42. Pursuant to 40 C.F.R. § 68.15, Respondent was required to have a management system to oversee implementation of the risk management program elements, have a qualified person responsible for the RMP, and document any transfers of management responsibility.

43. During the EPA Inspection, the Director told EPA inspectors that he was hired in 2005 but had no knowledge of an RMP at the Facility. Accordingly, Respondent has failed to manage its RMP obligations at least since the Director started managing the Facility in 2005 because he was not made aware of the existence of an RMP or RMP responsibilities.

44. By failing to implement a management system from at least February 2,

2005, to the present, Respondent violated Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. § 68.15.

**C. FAILURE TO UPDATE HAZARD REVIEW**

45. The allegations in paragraphs 1 through 44 are incorporated by reference as if fully set forth herein.

46. Pursuant to the Program 2 Prevention Program requirements in 40 C.F.R. Part 68, Subpart C, one of Respondent's obligations was to conduct a review of the hazards ("hazard review") associated with the regulated substances, processes, and procedures. See 40 C.F.R. § 68.50. The review must identify the hazards associated with the process and regulated substances, opportunities for equipment malfunctions, and human errors that could cause an accidental release; the safeguards used or needed to control the hazards or prevent equipment malfunctions or human error; and any steps used or needed to detect or monitor releases. The hazard review must determine whether the process is designed, fabricated, and operating in accordance with industry standards. Respondent must document the hazard review, ensure that any problems identified are resolved in a timely manner, and update the hazard review at least once every five years.

47. Respondent failed to update its hazard review in the last five years.

48. Accordingly, from at least June 18, 2009, to the present, Respondent violated Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. §§ 68.12, 68.50 and 68.190.

**D. FAILURE TO IMPLEMENT MAINTENANCE PROGRAM**

49. The allegations in paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

50. Pursuant to 40 C.F.R. § 68.56, Respondent must, among other things, prepare and implement procedures to maintain the ongoing mechanical integrity of process equipment. Respondent must also perform inspections and tests on process equipment, following recognized and generally accepted good engineering practices. Records documenting compliance with this requirement shall be maintained pursuant to 40 C.F.R. § 68.200.

51. At the time of the EPA Inspection, the Facility was unable to produce documents pertaining to maintenance and testing programs for its chain hoist. Information pertaining to the safety and functionality of the chlorine detectors and analyzers was not available.

52. Accordingly, Respondent violated Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E) and 40 C.F.R. § 68.56.

#### V. ADMINISTRATIVE ORDER ON CONSENT

##### 53. Compliance Work

(a) Hazard Review and Compliance Audit: As soon as possible but within no later than 30 days from the effective date of this AOC,

Respondent shall:

- i. Conduct a Hazard Review in accordance with 40 C.F.R. § 68.50 and a Compliance Audit in accordance with 40 C.F.R. § 68.58.
- ii. Submit a work plan with proposed deadlines (“Recommendations and Schedule”) to resolve any issues, identified in the Hazard Review and/or Compliance Audit. The

Recommendations and Schedule shall be subject to EPA approval, in accordance with the provisions of paragraph 55 below; and once approved, shall be incorporated by reference into this AOC.

(b) Implement Recommendations and Schedule from Hazard Review and Compliance Audit: Respondent shall implement the EPA-approved Recommendations in accordance with the EPA-approved Schedule. Subsequently, Respondent shall submit a Completion Report within 30 days of completing the work required by EPA-approved Recommendations and Schedule. The Completion Report shall contain the following information:

- i. a description of the Recommendations as implemented;
- ii. a description of any problems encountered in completing the Recommendations and the solutions thereto;
- iii. a list of expenditures; and
- iv. a certification that the Recommendations have been fully implemented pursuant to the provisions of this AOC.

EPA may, in its sole discretion, require information in addition to that described in this subparagraph in order to evaluate the Completion Report. After receiving the Completion Report, EPA shall review it in accordance with the procedures in Paragraph 55 below.

(c) RMP Certification: As soon as possible but within no later than 90 days from the effective date of this AOC, Respondent shall:

- i. Certify and document that Respondent is in compliance

with all RMP elements found in 40 C.F.R. Part 68 to which the Facility is subject for its covered chlorine processes, including but not limited to:

1. 40 C.F.R. § 68.12 (General Requirements);
2. 40 C.F.R. § 68.15 (Management System to Oversee Implementation of RMP);
3. 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences Release);
4. 40 C.F.R. Part 68, Subpart C (Program 2 Prevention Program) including but not limited to an updated Hazard Review, completed in accordance with 40 C.F.R. § 68.50; and
5. 40 C.F.R. Part 68, Subpart E (Emergency Response Program);

ii. Submit the RMP electronically, in accordance with the directions found at [www.epa.gov/emergencies/content/rmp/index.htm#submitting](http://www.epa.gov/emergencies/content/rmp/index.htm#submitting); and

iii. Submit a copy of the RMP and all supporting documentation to EPA in accordance with the instructions set forth in paragraph 54; and

(d) Respondent shall submit all documents under this paragraph, including but not limited to the Hazard Review, Compliance Audit, Recommendations and Schedule, Completion Report, and all supporting

documents to EPA in accordance with the instructions set forth in paragraph 54.

54. **Notice:** Respondent shall submit all notices, schedules, work plans, and documentation required by this AOC to:

Len Wallace  
Environmental Scientist, OES05-1  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

With a copy to:

Steven Schlang  
Senior Enforcement Counsel, OES04-3  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

55. **Approval of Deliverables:**

(a) After review of the Recommendations, Schedule, Completion Report, or any other document that is required to be submitted pursuant to this AOC (the "Submission"), EPA shall in writing (i) approve the Submission; (ii) approve the Submission with specified conditions; (iii) approve part of the Submission and disapprove the remainder; or (iv) disapprove the Submission.

(b) If the Submission is approved, Respondent shall take all actions required by the Submission in accordance with the schedules or requirements therein. If the submission is conditionally approved or approved only in part, Respondent shall, upon written direction from EPA,

take all actions required by the Submission that EPA determines are technically severable from any disapproved portions.

(c) If the Submission is disapproved in whole or in part, Respondent shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the Submission, or disapproved portion thereof, for approval in accordance with the preceding subparagraphs. If the resubmission is approved in whole or in part, Respondent shall proceed in accordance with the preceding subparagraphs.

(d) Any stipulated penalties applicable to the original Submission, as provided in Section VI of this AOC, shall accrue during the 30-day period or other specified period but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original Submission was so deficient as to constitute a material breach of Respondent's obligations under this AOC as determined by EPA, the stipulated penalties applicable to the original Submission shall be due and payable notwithstanding any subsequent resubmission.

(e) If a resubmission or portion thereof is disapproved in whole or in part, EPA may again require Respondent to correct any deficiencies, in accordance with the preceding subparagraphs.

56. All documents submitted to EPA in the course of implementing this AOC shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2 Subpart B and determined by EPA to merit treatment as confidential

business information in accordance with applicable law.

## VI. STIPULATED PENALTIES

57. Respondent must pay the following stipulated penalties to the United States for violations of this AOC, subject to the limitations of CAA Section 113(d)(1) on EPA's administrative penalty authority.

58. For failure to perform the work and submit the documents required by paragraph 53 above, in a manner consistent with the terms of this AOC, or within the time required by this AOC: \$500 per day for the first fifteen (15) days of such violation; \$1000 per day for the sixteenth (16<sup>th</sup>) through thirtieth (30<sup>th</sup>) day of such violation, and \$1500 per day for each day of such violation, thereafter.

59. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC. Penalties shall continue to accrue regardless of whether EPA has notified Respondent of a violation.

60. All penalties owed to the United States under this Section shall be due and payable within thirty (30) days of Respondent's receipt from EPA of a written demand for payment of the penalties. Such a written demand will describe the violation and indicate the amount of penalties due.

61. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

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

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

All such checks shall contain "*In the Matter of the City of Fall River, Massachusetts, Clean Air Act Administrative Order on Consent, EPA Region I*" and Respondent's name and address in the reference line. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA contacts listed in Paragraph 54 above.

62. The payment of stipulated penalties shall in no way alter Respondent's obligation to comply with the terms and conditions of this AOC.

63. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this AOC.

64. No payments under this Section shall be tax deductible for federal tax purposes.

**VII. EFFECT OF SETTLEMENT,  
RESERVATION OF RIGHTS, AND JUDICIAL REVIEW**

65. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this AOC. This AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any other statutory, regulatory, or common law authority of the United States.

66. This AOC does not resolve any civil or criminal claims of the United States for the violations alleged in this AOC, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation.

67. This AOC is not intended to be nor shall it be construed to be a permit. Further, the Parties acknowledge and agree that EPA's approval of this AOC does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of CAA Section 112(r), 42 U.S.C. § 7412(r)(7) and 40 C.F.R. Part 68. Compliance by Respondent with the terms of this AOC shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, State, or federal laws and regulations.

68. Respondent does not admit any of the factual or legal determinations made by the EPA and reserves all rights and defenses it may have regarding liability or responsibility for conditions at the Facility, with the exception of its right to contest EPA's jurisdiction to issue or enforce this AOC and its right to contest the terms of this AOC. Respondent has entered into this AOC in good faith without trial or adjudication of any issue of fact or law.

69. Respondent waives any rights to judicial review of the AOC.

70. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

71. Neither EPA nor the United States, by issuance of this AOC, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or

consultants engaged to carry out any action or activity pursuant to this AOC. Nor shall EPA or the United States be held as a party to any contract entered into by Respondent or by its employees, agents, contractors, or consultants.

72. The Parties shall bear their own costs and fees in this action, including attorney's fees.

#### **VIII. MODIFICATION**

73. This AOC (including, but not limited to, the EPA-approved Recommendations and Schedule) may only be modified by mutual agreement of the Parties. Any agreed-upon modifications shall be in writing, be signed by both Parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this AOC. Changes to scheduling may be approved by the EPA's Manager for the RCRA, EPCRA and Federal Programs Unit instead of the Director of the Office of Environmental Stewardship.

#### **IX. SEVERABILITY**

74. If any provision or authority of this AOC or the application of this AOC to any Party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the AOC shall remain in force and shall not be affected thereby.

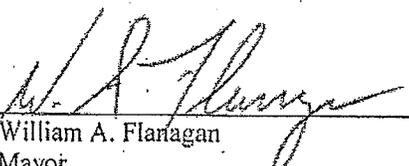
#### **EFFECTIVE DATE**

75. This NOV/AOC shall take effect immediately upon receipt by Respondent of a fully executed copy of the NOV/AOC. The AOC shall apply to Respondent, its officers, agents, servants, employees, successors, and assigns, and to all persons, firms, and corporations acting under, through, or for Respondent. This action is not subject to

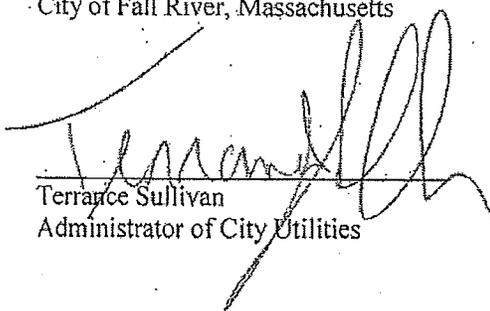
Office of Management and Budget review under the Paperwork Reduction Act, 44

U.S.C. Chapter 35.

76. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this of this AOC and to execute and legally bind Respondent to it.

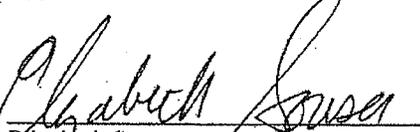
  
\_\_\_\_\_  
William A. Flanagan  
Mayor  
City of Fall River, Massachusetts

9-25-13  
Date

  
\_\_\_\_\_  
Terrance Sullivan  
Administrator of City Utilities

9/25/13  
Date

Approved as to form and manner of execution:

  
\_\_\_\_\_  
Elizabeth Sousa  
Corporate Counsel

9/25/13  
Date

Susan Studlien  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region I – New England

09/27/13  
Date

CITY OF FALL RIVER  
IN CITY COUNCIL

OCT 15 2013

21

Referred to the  
Committee on Finance

City of Fall River, Department of Community Utilities, Water Division

PUBLIC NOTICE – 9/12/13

IMPORTANT INFORMATION  
ABOUT YOUR DRINKING WATER

The City of Fall River's water system was recently in violation of an Environmental Protection Agency (EPA) drinking water standard. Although this is not an emergency, you have a right to know what has happened, what you should do and what is being done to correct the situation.

Fall River's drinking water is disinfected with chlorine to kill bacteria. In addition to testing for bacteria in the distribution system, the water is also tested quarterly, at various sites throughout the distribution system for the presence of byproducts related to the disinfection process. The EPA sets standards for the maximum levels of both disinfectants and disinfection byproducts (DBPs) in drinking water. This includes substances known as and collectively called total trihalomethanes or TTHMs.

The EPA Stage 2 DBP Rule, which went into effect in 2012, requires water systems to meet "locational" running annual averages (LRAA) for total TTHM at each of eight (8) DEP/EPA approved sampling locations. Historically since the early 1990s, Fall River has had to report a combined running annual average (RAA) of all samples collected in the distribution system and continuously met the EPA requirements. With the more stringent Stage 2 DBP Rule requirements, Fall River has increased a DEP mandated flushing program to help meet these requirements.

The compliance limits for TTHMs are calculated by averaging the results at each location. The LRAA results show that our system exceeded the maximum contaminant level for TTHMs at one (1) location. The EPA standard for TTHMs is 80 parts per billion (ppb). The LRAA value for the one location, 631 Airport Road, was 84 ppb.

**What does this mean?**

This is NOT an emergency, nor is there any imminent risk. If it had been an emergency situation, you would have been notified immediately through local media outlets. Some people who drink water containing trihalomethanes in excess of the maximum contaminant level over many, many years may experience problems with their livers, kidneys or central nervous system and may have an increased risk of getting cancer. There are no known short term acute impacts.

**What should I do?**

You DO NOT need to use an alternate water supply such as bottled water. However, if you have specific health concerns, please consult your doctor.

**What happened? What is being done?**

TTHMs form when free chlorine reacts with naturally occurring organic matter in water. Lowering TTHM levels may be achieved by removing organic matter, as is now done via the treatment process and by flushing or otherwise adding processes to remove TTHMs from the water.

The risk of health impacts from TTHMs is much lower than the risk of illness from drinking water that has not been disinfected. Fall River is currently continuing flushing the system and working with the DEP and our consultant on a longer term corrective action plan that will ensure continued compliance with the TTHM standards.

**How do I find out more information?**

For more information, please contact Ted Kaegaal Jr. (Director of Treatment & Resources) @ 508-324-2725 or Terry Sullivan, (Administrator of Community Utilities) with related questions.

This public notice is sent to you by the City of Fall River

PWS ID# 4095000

September 27, 2013

*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.*

**INDICAÇÃO IMPORTANTE NA DISPONIBILIDADE DESTE RELATORIO**

Este relatório contém informação muito importante sobre sua água potável. Por favor traduza-o ou fale com alguém que-lhe compreende. As cópias deste relatório em Português podem ser obtidas no escritório do Departamento de Água no terceiro andar em Government Center, ou chamando 508-324-2330.