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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	
	)	
City of St. Charles, A Municipal	)	Proceeding to Assess a
Corporation, Operating As-	)	
St. Charles Wastewater	)	Civil Penalty under Section
Treatment Facility	)	113(d) of the Clean Air Act,
1404 S. Seventh Avenue	)	42 U.S.C. § 7413(d)
St. Charles, Illinois 60174	)	
	)	
	)	
Respondent	)	Docket No. CAA-05-2008-0003

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NOTICE OF FILING

TO: See attached service list.

PLEASE TAKE NOTICE that on May 6, 2008, I, Yesenia Villasenor-Rodriguez, an attorney with the law firm of Drinker Biddle & Reath LLP filed **RESPONDENT'S ANSWER TO SECOND AMENDED ADMINISTRATIVE COMPLAINT**, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

CITY OF ST. CHARLES

By: Y. Villasenor-Rdg. One of the Attorneys for Respondent

Dated: May 6, 2008

Drinker Biddle & Reath LLP
Roy M. Harsch
Yesenia Villasenor-Rodriguez
191 N. Wacker Drive - Suite 3700
Chicago, IL 60606-1698
312-569-1000

<u>**CERTIFICATE OF SERVICE**</u>

I, Yesenia Villasenor-Rodriguez, an attorney in the law firm of Drinker Biddle & Reath LLP, certify that a copy of the foregoing **Respondent's Answer to Second Amended Administrative Complaint** was served by first class mail upon the following:

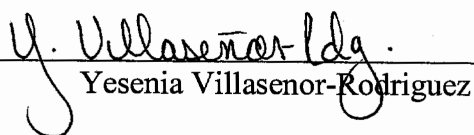
Richard W. Wagner
Office of Regional Counsel (C-29A)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

and hand delivered to:

Marcy A. Toney
Regional Judicial Officer (C-14J)
U.S. EPA, Region 5 – 14th floor
77 West Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-13J),
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

on this 6th day of May, 2008.



Yesenia Villasenor-Rodriguez

CH01/ 13500820.1

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: **St. Charles Wastewater Treatment Facility** **1404 S. Seventh Ave.** **St. Charles, Illinois 60174** **Respondent**	))))))))	**Proceeding to Assess a Civil Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. §7413(d)** **Docket No. CAA-05-2008-0003**

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RESPONDENT'S ANSWER TO SECOND AMENDED ADMINISTRATIVE COMPLAINT

1. This is an Administrative Complaint issued by the Administrator of the United States Environmental Protection Agency ("U.S. EPA") under Section 113(d) of the Clean Air Act (-CAA"), 42 U.S.C. §7413(d), and pursuant to 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("the Administrator Rules"), 64 Fed. Reg. 40137 (July 23, 1999), codified at 40 C.F.R. Part 22 (July 1, 2006).

ANSWER:

Respondent asserts that the cited provisions of the CAA and the Code of Federal Regulations ("CFR") speak for themselves, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

2. The Director of the Superfund Division, U.S. EPA, Region 5, is, by lawful delegation, the Complainant in this matter.

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

3. The City of St. Charles, Illinois, a municipal corporation, operating as the St. Charles Wastewater Treatment Facility, is the Respondent in this matter.

ANSWER:

Admitted.

STATUTORY AND REGULATORY BACKGROUND

4. 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.

ANSWER:

Respondent asserts that the cited provision of the CAA speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

5. 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.

ANSWER:

Respondent asserts that the cited provision of the CAA speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

6. 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.

ANSWER:

Respondent asserts that the cited provision of the CAA speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

7. 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.

ANSWER:

Respondent asserts that the cited provision of the CAA speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

8. 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.

ANSWER:

Respondent asserts that the cited provision of the CAA speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

9. 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 Fed. Reg. 4478 (January 31, 1994), which have been codified, as amended, at 40 C.F.R. § 68.130.

ANSWER:

Respondent asserts that the cited provisions of the CAA and the CFR speak for themselves, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

10. 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 Fed. Reg. 31668 (June 20, 1996), which have since been codified, and amended, at 40 C.F.R. Part 68 - Chemical Accident Prevention Provisions.

ANSWER:

Respondent asserts that the cited provisions of the CAA and the CFR speak for themselves, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

11. In November 2006, pursuant to authority under Section 113(d)(1) of the CAA, 42 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.

ANSWER:

Respondent asserts that the cited provision of the CAA speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

GENERAL ALLEGATIONS

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

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

13. That Respondent owns and operates a wastewater treatment facility, located at 1405 South Seventh Avenue, St. Charles. Illinois, which facility consists of buildings and operating equipment ("the Facility").

ANSWER:

Admitted.

14. That in June 1999, pursuant to Section 112(r) of the CAA, 42 U.S.C.§ 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA a Risk Management Plan.

ANSWER:

Respondent admits that it submitted a Risk Management Plan ("RMP") to the U.S. EPA. However, Respondent is without knowledge regarding the specific details of the RMP that it submitted due to the fact that Respondent's former employer recently left the City of St. Charles and is living and employed outside the State of Illinois, and Respondent has been unable to locate all of its records, including an original copy of the RMP that it submitted that relates to the claims asserted in this matter. Respondent requested a copy of its submitted RMP from U.S. EPA's Risk Management Program Center. U.S. EPA responded with what appears to be a copy of its database information but did not provide a copy of the original submittal. Consequently, Respondent denies the remaining allegations in this paragraph. Further answering, Respondent's investigation to locate all of its records in connection with this matter continues.

15. That in the Risk Management Plan submitted to U.S. EPA, Respondent admitted the following:

(1) that the Facility fell within NAICS Code 22132, as a Sewage Treatment Facility;

(2) that it used "1943 chlorine," CAS No. 7782-50-5, as a process chemical during its operations;

(3) that, at the time it submitted its Risk Management Plan, it held at its facility 4,000 lbs. of "1943 chlorine," CAS No. 7782-50-5.

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required. Further answering, Respondent acknowledges that it is a facility within the NAICS Code above, that it uses 1943 chlorine as a disinfectant and that the document referred to in Response 14 above lists 4,000 lbs. of 1943 chlorine. Respondent is without knowledge as to the remaining allegation above and therefore, denies same. Respondent's investigation continues.

16. That on August 31, 2004, an authorized representative of U.S. EPA conducted an Inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.

ANSWER:

Respondent admits that an inspection occurred at its facility. However, respondent is without knowledge as to the remaining allegations therefore, denies same.

17. That during the course of inspection, Respondent held at the Facility 12,840 lbs of "1943 chlorine," CAS No. 7782-50-5.

ANSWER:

Respondent admits that the inspection report noted that the Facility had 12,840 lbs of chlorine but is without specific knowledge and therefore, denies same.

18. That 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 substances 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.

ANSWER:

Respondent asserts that the cited provisions of the CAA and CFR speak for themselves, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

19. That the Administrator has defined "stationary source" to mean "any buildings, structures, equipment, installations, or substances 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.

ANSWER:

Respondent asserts that cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

20. That the Facility is a "stationary source" as defined at 40 C.F.R § 68.3.

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

21. That 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."

ANSWER:

Respondent asserts that cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

22. That 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.

ANSWER:

Respondent asserts that cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

23. That in June 1999, having held for use in its operations at the Facility 4,000 lbs. of "1943 chlorine" (CAS No. 7782-50-5), see Paragraph 15, and in August 2004, having held for use in its operations at the Facility 12,840 lbs. of "1943 chlorine" (CAS No. 7782-50-5), see Paragraph 17, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 C.F.R. Part 68.

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required. Further answering, see Respondent's responses to Paragraphs 15 and 17 above.

24. That pursuant to the compliance schedule identified at 40 C.F.R. § 68.10, respondent was required to comply with the requirements of 40 C.F.R. Part 68 no later than June 21, 1999.

ANSWER:

Respondent asserts that cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

25. That for purposes of complying with the requirements of 40 C.F.R. Part 68, in addition to meeting the general requirements, identified at 40 C.F.R. § 68.12(a), Respondent was required to meet Program 2 eligibility requirements, identified at 40 C.F.R. § 68.12(c). See 40 C.F.R. § 68 10(c).

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

STATEMENT OF VIOLATIONS

Count I

26. That Paragraphs 1 through 25 of this Complaint are incorporated herein by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 25 as its answer to Paragraphs 1 through 25 of Count I, as if fully set forth herein.

27. That 40 C.F.R. § 68.12(a) provides that the owner or operator of a stationary source subject to 40 C.F.R, Part 68, shall submit a single Risk Management Plan, as provided in 40 C.F.R. §§ 68.150 to 68.185.

ANSWER:

Respondent asserts that the cited CFR provisions speak for themselves, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required. Additionally, see Respondent's response to Paragraph 14 above.

28. That 40 C.F.R. § 68.150 provides that, in addition to submitting an initial Risk Management Plan, as Respondent did in June 1999, see Paragraph 14, owners or operators must submit to U.S. EPA updated Risk Management Plans in accordance with 40 C.F.R. §§ 68.190 and 68.195.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

29. That 40 C.F.R. § 68.190(b)(1) requires that an owner or operator of a stationary source shall revise and update its Risk Management Plan submitted under 40 C.F.R. § 68.150 at least once ever five years from the date of its initial submission or most recent update.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

30. That between the submission of its Risk Management Plan to U.S. EPA in June 1999, and the August 2004 U.S. EPA inspection, Respondent failed to review and update its Risk Management Plan and submit it to U.S. EPA.

ANSWER:

Denied. Further answering, Respondent asserts that it reviewed the risks associated with the continued use of chlorine disinfection as part of its day-to-day sewage treatment plant operations and determined that it would reduce such risks. This is evidenced by Respondent's submittals to the Illinois Environmental Protection Agency ("IEPA") which included a facility plan, a construction loan application, and a construction permit application for the installation of an ultraviolet disinfection system as a replacement for Respondent's day-to-day chlorine disinfection system. Moreover, this decision and these submittals were made subsequent to the date of submittal of its RMP and prior to August 2004. Respondent is without knowledge of whether or not this information was provided to the U.S. EPA. Respondent's investigation continues.

31. That in failing to review and update its Risk Management Plan and submit it to U.S. EPA, as set forth at Paragraph 30, Respondent violated 40 C.F.R. § 68.190, and, consequently. Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Defendant denies that it failed to review and update its RMP as provided in response to Paragraph 30 above. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count II

32. That Paragraph 1 through 31 of this Complaint are herein incorporated by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 31 as its answer to Paragraphs 1 through 31 of Count II, as if fully set forth herein.

33. That 40 C.F.R. § 68.12(c)(2) provides that owners or operators meeting Program 2 requirements must conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

34. That in the Risk Management Plan it submitted to U.S. EPA in June 1999, identified here at Paragraph 16, Respondent included its "offsite consequences analyses" in conformance with parameters set forth at 40 C.F.R. § 68.22.

ANSWER:

Defendant admits that it submitted a RMP however; it denies the remaining allegations because it lacks sufficient knowledge as whether to admit or deny same. Respondent's investigation continues.

35. That 40 C.F.R. § 68.36 provides that the owner or operator subject to the requirements of 40 C.F.R. Part 36 shall review and update its "offsite consequence analyses" at least once every five years.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

36. That at the time of U.S. EPA's inspection in August 2004, Respondent had not reviewed and updated its "offsite consequences analyses."

ANSWER:

Respondent lacks sufficient knowledge as to admit or deny the allegations in Paragraph 36 and therefore, denies same. Further answering, Respondent's investigation continues. Further answering; see response to Paragraph 30 above.

37. That Respondent's failure to review and update its "offsite consequence analyses" within the required time-frame of 40 C.F.R. § 68.36, as set forth in Paragraph 36, is a violation of 40 C F.R. § 68.36, and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count III

38. That Paragraph 1 through 37 of this Complaint are herein incorporated by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 37 as its answer to Paragraphs 1 through 37 of Count III, as if fully set forth herein.

39. That 40 C.F.R. § 68.39(a) requires that an owner or operator shall maintain certain records related to its offsite consequences analyses, identified therein.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

40. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce records documenting the preparation of its "offsite consequences analyses," as identified it 40 C.F.R. § 68.39(a).

ANSWER:

Respondent lacks sufficient knowledge as to admit or deny the allegations in Paragraph 40 and therefore, denies same. Further answering, Respondent's investigation continues.

41. That Respondent's failure to maintain records documenting the preparation of its "offsite consequences analyses," as set forth in Paragraph 40, is a violation of 40 C.F.R. § 68.39(a), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count IV

42. That Paragraph 1 through 41 of this Complaint are incorporated herein by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 41 as its answer to Paragraphs 1 through 41 of Count IV, as if fully set forth herein.

43. That 40 C.F.R. § 68.15(a), in part, provides that the owner or operator of a stationary source with processes subject to Program 2 requirements shall develop a management system to oversee the implementation of the risk management program elements.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

44. That 40 C.F.R. § 68.15(b) provides that the subject 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.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

45. That 40 C.F.R. §68.15(c) requires that, when responsibility for implementing individual requirements of 40 CFR Part 68 is assigned to persons other than the person identified under 40 C.F.R. § 68.15(b), the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

46. That Respondent developed a management system to oversee the implementation of the risk management program elements, and assigned to one Clifford White the overall responsibility for the development, implementation, and integration for the risk management program elements.

ANSWER:

Admitted.

47. That Respondent assigned persons other than Clifford White responsibility for Implementing individual requirements of 40 CFR Part 68, but, at the time of the inspection, identified in Paragraph 16, Respondent did not have any documentation of lines of authority for these responsibilities either in an organization chart, or a similar document.

ANSWER:

Respondent lacks sufficient knowledge as to admit or deny the allegations in Paragraph 47 and therefore, denies same. Further answering, Respondent's investigation continues.

48. That Respondent's failure to document lines of authority among its employees assigned responsibility for implementing requirements of 40 CFR Part 68, as set forth in Paragraph 47, is a violation of 40 C.F.R. § 68.15(c), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 § 7413(d).

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count V

49. That Paragraphs 1 through 48 of this Complaint are herein incorporated by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 48 as its answer to Paragraphs 1 through 48 of Count V, as if fully set forth herein.

50. That 40 C.F.R. § 68.12(c)(3) provides that owners or operators must meet Program 2 prevention steps provided in 40 C.F.R. §§ 68.48 through 68.60, or implement Program prevention steps provided in §§ 68.65 through 68.87.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

51. That 40 C.F.R. § 68.48(a) requires, in part, that an owner or operator shall maintain up-to-date safety information related to the regulated substances, processes, and equipment at its facility, including:

- maximum intended inventory of equipment in which the regulated substances are stored or processed, § 68.48(a)(2);
- safe upper and lower temperatures, pressure, flows, and compositions, § 68.48(a)(3); and
- equipment and specifications. § 68.48(a)(4).

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

52. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce any safety information records as identified in Paragraph 51.

ANSWER:

Respondent is without sufficient knowledge as to whether admit or deny the allegations in Paragraph 52 and therefore, denies same. Respondent's investigation continues.

53. That Respondent's failure to maintain safety information records, as set forth in Paragraph 52, is a violation of 40 C.F.R. § 68.48(a), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count VI

54. That Paragraphs 1 through 53 of this Complaint are herein incorporated by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 53 as its answer to Paragraphs 1 through 53 of Count VI, as if fully set forth herein.

55. That 40 C.F.R. § 68.50(a) requires that an owner or operator shall conduct a review of the hazards associated with its regulated substances, process, and procedures, identifying circumstances specifically identified at 40 C.F.R. § 68.50(a)(1)-(4).

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

56. That 40 C.F.R. § 68.50(c) provides, in part, that the owner or operator shall document the results of the review required by 40 C.F.R. § 68.50(a).

ANSWER:

Respondent asserts that the cited CFR provisions speak for themselves, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

57. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce records documenting that it had ever prepared any review of the hazards associated with its "1943 chlorine," CAS No. 7782-50-5, and its process and procedures.

ANSWER:

Respondent is without sufficient knowledge as to whether admit or deny the allegations in Paragraph 52 and therefore, denies same. Respondent's investigation continues.

58. That Respondent's failure to maintain records documenting the preparation of the required hazard review, as set forth in Paragraph 57, is a violation of 40 C.F.R. § 68.50(c), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count VII

59. That Paragraph 1 through 58 of this Complaint are herein incorporated by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 58 as its answer to Paragraphs 1 through 58 of Count VII, as if fully set forth herein.

60. That 40 C.F.R. § 68.52(a) requires that an owner or operator shall prepare written operating procedures, in conformance with 40 C.F.R. § 68.52(b), that provide clear instructions or steps tier safely conducting activities associated with each governed process, consistent with safety information for each process.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

61. That, in preparing the written procedures required by 40 C.F.R. § 68.52(a), an owner or operator must address, in part, the following: initial operations; normal operations; temporary operations; emergency shutdown and operations; normal shutdown; startup following a normal emergency shutdown or a major change that requires a hazards review; consequences of deviations and steps required to correct or avoid deviations; and equipment inspections. 40 C.F.R. § 68.52(b).

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

62. That at the time of U.S. EPA's inspection of August 2004, Respondent could not produce written crating procedures which addressed the following: normal operations; temporary operations; emergency shutdown and operations; and normal shutdown; startup following a normal or emergency shutdown or a major change that requires a hazards review; consequences of deviations and steps required to correct or avoid deviations; and equipment inspections.

ANSWER:

Respondent is without sufficient knowledge as to whether admit or deny the allegations in Paragraph 62 and therefore, denies same. Respondent's investigation continues.

63. That Respondent's failure to prepare and maintain complete written operating procedures, as set forth at Paragraph 62, is a violation of 40 C.F.R. § 68.52(a), and consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count VIII

64. That Paragraphs 1 through 63 of this Complaint are herein incorporated by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 63 as its answer to Paragraphs 1 through 63 of Count VIII, as if fully set forth herein.

65. That 40 C.F.R. § 68.58(a) requires that an owner or operator shall certify that it has evaluated compliance with the provisions of 40 CFR Part 68, subpart C (40 C.F.R. §§ 68.48 - 40 CFR 68.60), at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

ANSWER:

Respondent asserts that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

66. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce certification of every having conducted a compliance audit as required by C.F.R.

ANSWER:

Respondent is without sufficient knowledge as to whether admit or deny the allegations in Paragraph 66 and therefore, denies same. Respondent's investigation continues.

67. That in failing to certify that, at any time between June 1999 and August 2004, it conducted a compliance audit in conformance with 40 C.F.R. § 68.58, as set forth at Paragraph 66, Respondent violated 40 C.F.R. § 68.58, and, consequently, Respondent is liable for a civil to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

Count IX

68. That Paragraphs 1 through 67 of this Complaint are herein incorporated by reference.

ANSWER:

Respondent restates and realleges its answers to Paragraphs 1 through 67 as its answer to Paragraphs 1 through 67 of Count IX, as if fully set forth herein.

69. That 40 C.F.R. § 68.190(c) provides that if a stationary source is no longer subject to 40 C.F.R. Part 68 – Chemical Action Prevention Provisions, the owner or operator shall submit a de-registration to U.S. EPA within six months indicating that the stationary source is no longer covered.

ANSWER:

Respondent asserts that that the cited CFR provision speaks for itself, and therefore, this Paragraph requires no response. Further answering, Respondent asserts that this Paragraph contains conclusions of law to which no answer is required.

70. That in Paragraph 30 of Respondent's Answer to Administrative Complaint, Respondent asserts that, "prior to August 2004," it made certain submissions to the Illinois Environmental Protection Agency, which included

> A facility plan, a construction loan application, and a construction permit application for the installation of an ultraviolet system as a replacement for Respondent's day-to-day chlorine disinfection system. . . . Respondent is without knowledge of whether or not this information was provided to the U.S. EPA.

ANSWER:

Respondent's Answer to Administrative Complaint speaks for itself and therefore, no answer is required.

71. That in Respondent's Answer to Administrative Complaint, at p. 22, Respondent asserts the following:

> Respondent has eliminated the use of chlorine as disinfectant for its main treatment plant except for the treatment of its excess flow discharge. Respondent has replaced its chlorine disinfection system with an ultraviolet disinfection system. Additionally, Respondent has converted the excess flow discharge disinfection treatment to small cylinders and therefore, Respondent's facility is below the threshold provided in the requirements of Section 112(r) of the Clean Air Act.

ANSWER:

Respondent's Answer to Administrative Complaint speaks for itself and therefore, no is answer is required.

72. That at no time has Respondent submitted to U.S. EPA a de-registration, informing U.S. EPA that it was no longer required to comply with 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, and Section 112(r) of the CAA.

ANSWER:

Denied. Respondent has submitted its de-registration to the U.S. EPA dated March 2008 with an effective date of de-registration of February 8, 2006. Further answering, Ms. Monika Chrzaszcz, a representative of the U.S. EPA, conducted an inspection at the respondent's facility. Based on this inspection, Ms. Chrzaszcz observed that Respondent had replaced its chlorine disinfectant system with an ultra-violet disinfectant system and therefore, Respondent was no longer required to comply with the above cited provisions.

73. That in failing to de-register by informing U.S. EPA that it was no longer required to comply with 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, and Section 112(r) of the CAA, as set forth at Paragraph 71, Respondent violated 40 C.F.R. § 68.190(c), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

ANSWER:

Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

In the event that Respondent is held responsible for any violations alleged in the Complaint, then any proposed penalty is inappropriate given that Respondent is a municipality, Respondent's good faith, lack of willfulness and full cooperation with the U.S. EPA, the lack of any emissions or releases to the environment, and the lack of environmental harm or threat to human health.

SECOND AFFIRMATIVE DEFENSE

Notwithstanding Respondent's answers to the allegations in this complaint, Respondent believes that it has documents in its files that negate some if not all of the following specific allegations in Paragraphs 30, 35, 36, 41, 47, 52, 57, 62, and 67 above. Respondent is without knowledge as to why these documents were not provided at the time of inspection. Respondent has been unable to locate such documentation as of the time of its answer to this complaint. However, Respondent's investigation continues.

RESERVATION OF RIGHTS

Respondent may have additional defenses that cannot presently be articulated because Respondent still does not have copies of critical documents related to all of the U.S. EPA's allegations. Additionally, Respondent has not conducted any discovery. Respondent therefore reserves the right to amend this Answer or to assert other defenses upon the identification or discovery of additional information concerning U.S EPA's claims.

DISPUTE OF PROPOSED PENALTY

As provided in its affirmative defenses and without admitting that U.S. EPA is entitled to a penalty in this matter, but even if U.S. EPA is entitled to a penalty in this matter, Respondent disputes the proposed penalty amount of $46,000 based on the following:

1. Respondent is a municipality that serves the City of St. Charles community. Consequently, the proposed penalty is excessive in that the City serves the public by operating a municipal wastewater treatment plant.

2. Respondent timely filed a RMP.

3. Respondent has eliminated the use of chlorine as a disinfectant for its main treatment plant except for the treatment of its excess flow discharge. Respondent has replaced its chlorine disinfection system with an ultraviolet disinfection system. Additionally, Respondent has converted the excess flow discharge disinfection treatment to small cylinders and therefore, Respondent's facility is below the threshold provided in the requirements of Section 112(r) of the Clean Air Act.

4. Further, the penalty is excessive given the lack of any emissions or releases to the environment, and the lack of environmental harm or threat to human health as is evidenced by the allegations in this complaint.

5. Consequently, there was no economic impact gained by the Respondent thus, meriting the proposed penalty.

6. Respondent has been cooperative with the U.S. EPA.

7. Respondent has submitted its de-registration to the U.S. EPA.

REQUEST FOR HEARING

Respondent hereby requests a hearing regarding this Administrative Complaint to contest material factual allegations set forth in the Complaint and to contest the appropriateness of any compliance orders and/or penalty in this matter.

WHEREFORE, Respondent denies that the Complainant is entitled to any relief and requests judgment in favor of Respondent.

Dated: May 6, 2008

Respectfully submitted,

CITY OF ST. CHARLES

By: ______________________
One of its Attorneys

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