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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
City of St Maries)	Docket No. CAA-10-2009-0240
)	
St. Maries Idaho)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	
)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(d). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondent is the City of St. Maries ("Respondent").

1.3. Pursuant to Section 113(d) of the CAA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

1.4. The EPA Administrator and the Attorney General for the United States Department of Justice have jointly determined that this action, which includes the allegation that a CAA violation commenced more than 12 months ago, but does not seek

more than \$295,000 in CAA penalties, is an appropriate administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Respondent is a Municipality in the State of Idaho.

2.3. Respondent owns and operates a Wastewater Treatment Plant (“the facility”) located in St. Maries, Idaho.

2.4. A concise statement of the factual basis for alleging violations of the CAA, together with specific references to the provisions of the CAA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68 require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity to develop and implement a risk management plan (“RMP”) 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.

3.2. 40 C.F.R. § 68.150 requires that an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process submit an RMP to EPA no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under § 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

3.3. 40 C.F.R. § 68.3 defines “stationary source” 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.

3.4. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, and 40 C.F.R. § 68.130. Chlorine is listed as a regulated substance in 40 C.F.R. § 68.130.

3.5. 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. The threshold quantity of chlorine is 2,500 pounds, as listed in 40 C.F.R. § 68.130.

3.6. 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 substance, or combination of these activities.

3.7. Under 40 C.F.R. § 68.115, a threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is “present at a stationary source” if the total quantity of the regulated substance contained in a process exceeds the threshold quantity.

3.8. Respondent owns a stationery source where chlorine was present in a process above the 2,500-pound threshold quantity from May 26, 2004 to February 23, 2007. Therefore, Respondent was required to submit an RMP for the facility.

3.9. Respondent’s failure to submit an RMP for the facility by May 26, 2004, is a violation of Section 112(r) of the CAA and 40 C.F.R. § 68.150.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.11., below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, cooperation with EPA, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is \$9,220.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 4.6. above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.9. Respondent shall serve a photocopy of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addressees:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Javier Morales
Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10
Mail Stop ECL-116
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed penalty under the CAA. In any such

collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.12. Respondent agrees to implement a Supplemental Environmental Project ("SEP") consisting of the purchase and installation of a Treated Wastewater Flow Monitoring System, a Chlorine Analyzer, a Flow Proportional Chlorinator, a Chlorine Scale Monitoring System, and an Enhanced Leak Detection and Notification System.

Respondent ^{to} agrees to implement and complete the SEP in accordance with all provisions described in this Consent Agreement and Attachment A to this CAFO. The parties agree that this SEP is intended to secure significant environmental benefits by reducing the amount of chlorine discharged into the environment, reducing the risk from a release of chlorine, and by improving emergency management to allow a more immediate and effective response in the event of an emergency, pursuant to the following conditions:

(a) Respondent shall complete the installation of the Chlorine Scale Monitoring System and Enhanced Leak Detection and Notification portion of the SEP by July 31, 2010.

(b) Respondent shall complete the installation of the Treated Wastewater Flow Monitoring System and Chlorine Analyzer portion of the SEP by July 31, 2011.

(c) Within 30 days of the completion of the portion of the SEP identified in Paragraph 4.12.(a) above, Respondent must submit a SEP Progress Report to EPA. The progress report must include the same information contained in the SEP Completion Report as described in Paragraph 4.16. of this Order.

(d) Further details concerning the SEP referenced in subparagraphs (a) and (b) above are contained in Attachment A to this CAFO.

4.13. Respondent's deadlines to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents the performance of a SEP within the specified time period. A Force

Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.14. The cost to Respondent of implementing the SEP in accordance with the specifications set forth in Paragraph 4.12. above, and as further detailed in Attachment A of this CAFO, shall be not less than \$41,400. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

4.15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.

4.16. Respondent shall submit a SEP Completion Report to EPA, no later than 30 days after the completion of the SEP. The SEP Completion Report shall contain the following information:

- (a) A description of the SEP as implemented;

(b) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;

(c) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and

(d) A description of the environmental and public health benefits resulting from implementation of the SEP.

4.17. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 4.16. above, and the SEP Progress Report required by Paragraph 4.12.(c) of this CAFO shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.18. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Javier Morales
Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10
Mail Stop ECL-116
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.19. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.20. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.21., and Respondent

shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

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.

4.21. Following receipt of the SEP Completion Report described in Paragraph 4.16. above, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.23.

4.22. In the event a SEP is not completed as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.13. above, then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.23., below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.23. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described above and/or to the extent that the actual expenditures for the SEP does not equal or exceed

\$41,400.00, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(a) If the SEP identified in Paragraph 4.12. of this CAFO is not completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$41,400, less the amount actually expended.

(b) For failure to submit a SEP Completion Report as required by Paragraph 4.16., or the SEP Progress Report required by Paragraph 4.12.(c), Respondent shall pay a stipulated penalty in the amount \$100 for each day after the report is due until the report is received by EPA, not to exceed \$2,500.

4.24. Stipulated penalties under Paragraph 4.23., above, shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity, subject to the maximum set forth in Paragraph 4.23.(b), above.

4.25. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8., above. Interest and late charges shall be paid as stated in Paragraph 4.11. above.

4.26. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Clean Air Act."

4.27. Except as provided in Paragraph 4.30., below, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statute and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.28. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.29. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.30. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR CITY OF ST. MARIES

Robert Allen
Signature

Dated: 12-22-09

Print Name: ROBERT ALLEN

Title: Mayor

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

Edward J. Kowalski
Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 1/4/2010


V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 7th day of January, ~~2009~~ ²⁰¹⁰ *jun 7*



Thomas M. Jahfke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

ATTACHMENT A

IN THE MATTER OF: CITY OF ST. MARIES
EPA DOCKET NO. CAA-10-2009-0240
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

The City of St. Maries (City) will purchase and install a Treated Wastewater Flow Monitoring System, a Chlorine Analyzer and Flow Proportional Chlorinator. The implementation of this SEP will allow the City to reduce the amount of chlorine it discharges by automating the process. The SEP is expected to achieve an approximate 270 lbs reduction in annual chlorine usage (+/- 12% reduction). The proposed SEP would allow the City to reduce their chlorine consumption to approximately 1930 lbs per year, allowing the City to stay below their chlorine threshold on site limit of 2,100 lbs.

The City will also purchase and install a Chlorine Scale Monitoring System and Enhanced Leak Detection and Notification System. This will allow the weight of stored cylinders to be continually recorded in an accurate and automated manner. In addition to chlorine inventory management, the continuous weight recording and reporting can provide the operators with an early detection of any chlorine leaks outside the enclosed spaces that will be monitored by leak detection. A rapid drop in chlorine weight with no interior chlorine leak alarm or increase in wastewater chlorine application would indicate a leak elsewhere in the chlorine dosage system.

These proposals will provide added protection to the community and improve the efficiency of the wastewater treatment process, thereby reducing the impact of the wastewater treatment plant on the environment. The estimated cost to purchase and install a Treated Wastewater Flow Monitoring System, a Chlorine Analyzer and Flow Proportional Chlorinator is \$69,050. The estimated cost to purchase and install a Chlorine Scale Monitoring System and Enhanced Chlorine Leak Detection and Notification System is \$44,500. The total cost of the SEP is \$113,550.

The design of the SEP will be completed by March 31, 2010. The installation and completion of Chlorine Scale Monitoring System and Enhanced Leak Detection and Notification System upgrade portion of the SEP will be July 31, 2010. The installation and completion of Treated Wastewater Flow Monitoring System and Chlorine Analyzer portion of the SEP will be July 31, 2011.

Included on the following two pages is a more detailed description of the scope of the projects and the estimated costs.

Project Purpose

The City of St. Maries ("City") is proposing to complete Supplemental Environmental Projects ("SEP") that will improve the Emergency Planning and Preparedness of the City and will result in Pollution Prevention. Specifically, the proposals will provide added protection to the community and improve the efficiency of the wastewater treatment process, thereby reducing the impact of the wastewater treatment plant ("WWTP") on the environment. The main purpose of each project element is as follows:

Project Element	Purpose	Benefit
Treated Wastewater Flow Monitoring System	Allows more accurate dosing of chlorine because dosage is based on actual flow instead of estimated flow which will optimize chlorine usage and reduce chlorine use.	Pollution Prevention by optimizing the chlorine application and reducing the amount of chlorine discharged from the WWTP.
Chlorine Analyzer and Flow Proportional Chlorinator	Allows discharge of chlorine to be monitored continuously and dosing to be adjusted automatically based on flow rate and residual concentration. Reduces chlorine dosing.	Pollution Prevention by optimizing the chlorine application and reducing the amount of chlorine discharged from the WWTP.
Chlorine Scale Monitoring and Leak Detection, PLC/SCADA System	Automatically record chlorine weights, generate reports, automatically contact Emergency Responders Leak Alarm, Monitor Chlorine Dosage, Discharge Flow, Optimize Chlorine Usage.	Emergency Preparedness by managing chlorine storage based on automatic, and accurate computerized weight recording. Automatic Emergency Responder notification if chlorine alarm is triggered.

Project Description

The proposed project descriptions are provided below:

Project Element	Description	Opinion of Cost
Treated Wastewater Flow Monitoring System	Discharge flow (which controls chlorine dosing) is now measured using pump run times and estimated pump capacity. As pumps wear over time, the flow becomes imprecise. The new flow meter will allow improved accuracy of flow measurement to be provided to the PLC/SCADA and allow flow proportional chlorine dosing.	\$26,400
Treated Wastewater Residual Chlorine Analyzer	The treated water chlorine analyzer will sample from the end of the chlorine contact chamber. This analyzer will be used to provide a signal to the chlorinator which will optimize the chlorine dosage.	\$42,650
Flow Proportional Chlorinator	The flow proportional chlorinator will receive a signal from the PLC/SCADA system that is based on the treated water residual and the flow meter. The flow proportional chlorinator will automatically adjust the chlorine dosage to an optimal point reducing "overdosing and under dosing."	
Chlorine Scale Monitoring System.	The existing manually read scales will be replaced with pressure transducers that measure the cylinder weight and provide the data to a Programmable Logic Controller (PLC) and a System Control and Data Acquisition (SCADA) system that will be programmed to record daily weights, 365 days a year, auto-generate reports, and generate an alarm if scale weights exceed the established threshold.	\$44,500
Enhanced Chlorine Leak Detection and Notification System	The chlorine leak detection system will be modified to allow the alarm signal to pass the to the PLC/SCADA system and then to an auto-dialer that will notify emergency responders, city staff, County disaster service staff in a prescribed order.	

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: City of St. Maries, DOCKET NO.: CAA-10-2009-0240** was filed with the Regional Hearing Clerk on January 8, 2010.

On January 8, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:


Bob Hartman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on January 8, 2010, to:

Honorable Robert Allen
Mayor of City of St. Maries
602 College Avenue Street
St. Maries, Idaho 83702

Krista K. McIntyre
Stoel Rives, LLP
101 S. Capital Boulevard
Suite 1900
Boise, Idaho 83702

DATED this 8th day of January 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10