

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2017 DEC -6 AM 10:00

BEFORE THE ADMINISTRATOR

In the Matter of:

City of Russell, Kansas,

Respondent.

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Docket No.: CAA-07-2017-0369

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and City of Russell, Kansas (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent is the City of Russell, a municipality in the state of Kansas, which owns and operates the Russell Water Treatment Plant located at 210 S. Front Street, Russell, Kansas (Respondent's Facility).

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a management system, hazard assessment, a prevention program and an emergency response program.

7. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan ("RMP") that must be submitted to the EPA.

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

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(c), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of

up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, adjusted this amount so that penalties of up to \$37,500 per day are now authorized for violations of CAA § 112(r)(7) that occurred from January 12, 2009, through November 2, 2015, and penalties of up to \$45,268 are authorized for violations that occur after November 2, 2015.

Definitions

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

12. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

13. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

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

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

General Factual Allegations

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

17. Respondent’s Facility is a “stationary source” pursuant to 40 C.F.R. § 68.3.

18. Chlorine is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for Chlorine, as listed in 40 C.F.R. § 68.130 is 2,500 pounds.

19. On or about August 24, 2016, representatives of the EPA conducted an inspection of Respondent's Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

20. Information gathered during the EPA inspection revealed that Respondent had greater than 2,500 pounds of Chlorine in a process at its facility.

21. From the time Respondent first had onsite greater than 2,500 pounds of Chlorine in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

22. From the time Respondent first had onsite greater than 2,500 pounds of Chlorine in a process, Respondent was subject to Program 2 prevention program requirements because, pursuant to 40 C.F.R. § 68.10(c), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

23. From the time Respondent first had onsite greater than 2,500 pounds of Chlorine in a process, Respondent was required under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c).

Allegations of Violation

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

Count 1

25. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to submit a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185.

26. The regulation at 40 C.F.R. § 68.190(b)(1) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. § 68, to revise and update the RMP submitted under 40 C.F.R. § 68.150, at least once every five years from the date of its initial submission.

27. The regulation at 40 C.F.R. § 68.195(b) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. § 68, to submit a correction, within one month of any change, in the emergency contact information required under 40 C.F.R. § 68.160(b)(6).

28. The EPA inspection revealed that Respondent failed to submit a complete, and updated, RMP. Specifically,

- (a) Respondent failed to provide in the RMP an executive summary that includes a brief description of all the elements, as described at 40 C.F.R. § 68.155(a) – (f).
- (b) Respondent failed to revise and update the Risk Management Plan submitted under 40 C.F.R. § 68.150 at least once every five years from the date of its initial submission, as described at 40 C.F.R. § 68.190(b)(1).
- (c) Respondent failed to correct the Risk Management Plan within one month of any change in the emergency contact information, as described at 40 C.F.R. § 68.195(b).

29. Respondent's failure to submit an RMP pursuant to 40 C.F.R. §§ 68.150 – 68.185, as required by 40 C.F.R. § 68.12(a), is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Count 2

30. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

31. The regulation at 40 C.F.R. § 68.12(c)(1) requires the owner or operator of a stationary source with a process subject to Program 2 to develop and implement a management program as provided at 40 C.F.R. § 68.15.

32. The EPA inspection revealed that Respondent failed to develop or implement a management program. Specifically:

- (a) The Respondent failed to develop a management system to oversee the implementation of the risk management program elements, as described at 40 C.F.R. § 68.15(a).
- (b) The Respondent failed to document the names or positions of people, and the lines of authority defined through an organization chart or similar document, when the responsibilities for implementing individual requirements of this part are assigned to persons other than the person identified under paragraph (b) of this section, as described at 40 C.F.R. § 68.15(c).

33. Respondent's failure to develop and implement a management program pursuant to the requirements of 40 C.F.R. § 68.15(a) and (c), as required by 40 C.F.R. § 68.12(c)(1), is a violation of Section 112(r) of the CAA, 42 U.S.C. § 74.12(r).

Count 3

34. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

35. The regulation at 40 C.F.R. § 68.12(c)(2) requires the owner or operator of a stationary source with a process subject to Program 2 to conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 – 68.42.

36. The regulation at 40 C.F.R. § 68.36(a) requires the owner or operator to review and update the offsite consequence analyses at least once every five years.

37. The EPA inspection revealed that Respondent had not conducted a review and update the offsite consequence analysis at least once every five years, as described at 40 C.F.R. § 68.36(a).

38. Respondent's failure to update the offsite consequence analysis at least once every five years pursuant to 40 C.F.R. § 68.36(a), as required by 40 C.F.R. § 68.12(c)(2), is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Count 4

39. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

40. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements provided in 40 C.F.R. §§ 68.48 – 68.60.

41. The EPA inspection revealed that Respondent failed to implement the following Program 2 prevention requirements:

- (a) The Respondent failed to compile and maintain the up-to-date safety information related to the regulated substances, processes, and equipment, as described at 40 C.F.R. § 68.48(a).
- (b) The Respondent failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices, as described at 40 C.F.R. § 68.48(b).

42. Respondent's failure to compile and maintain up-to-date safety information related to the regulated substances, processes and equipment, and failure to ensure the process was designed in compliance with recognized and generally accepted good engineering practices pursuant to 40 C.F.R. § 68.48(a) – (b), as required by 40 C.F.R. § 68.12(c)(3), is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Count 5

43. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

44. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 – 68.60.

45. The EPA inspection revealed that Respondent failed to implement the following Program 2 prevention requirements:

- (a) The Respondent failed to conduct a review of the hazards associated with the regulated substances, process, and procedures, as described at 40 C.F.R. § 68.50(a).
- (b) The Respondent failed to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process, as described at 40 C.F.R. § 68.52(a) – (b).
- (c) The Respondent failed to ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures described at 40 C.F.R. § 68.52 that pertain to their duties, as described at 40 C.F.R. § 68.54(a).
- (d) The Respondent failed to provide refresher training at least every three years to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process, as described at 40 C.F.R. § 68.54(b).
- (e) The Respondent failed to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment, as described at 40 C.F.R. § 68.56(a).
- (f) The Respondent failed to train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process, as described at 40 C.F.R. § 68.56(b).
- (g) The Respondent failed to perform and certify appropriate compliance audits at least every three years, as described at 40 C.F.R. § 68.58.

46. Respondent's failure to comply with Program 2 prevention requirements of 40 C.F.R. §§ 68.48 – 68.60, as required by 40 C.F.R. § 68.12(c)(3), is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Count 6

47. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

48. The regulation at 40 C.F.R. § 68.12(c)(4) requires the owner or operator of a stationary source with a process subject to Program 2 to develop and implement an emergency response program as provided in §§ 68.90 – 68.95.

49. The EPA inspection revealed that Respondent's employees would respond to an accidental release of a regulated substance, and as a result should have developed and implemented an emergency response program for the purpose of protecting public health and the environment as described at 40 C.F.R. § 68.95.

50. Respondent's failure to comply with the emergency response program requirements of 40 C.F.R. § 68.95, as required by 40 C.F.R. § 68.12(c)(4), is a violation of Section 112(r) of the CAA, 42 U.S.C. § 74.12(r).

CONSENT AGREEMENT

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

- (a) Admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

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

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

Penalty Payment

54. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of Seventy-One Thousand One Hundred Seventy-Eight Dollars (\$71,178), as set forth below.

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

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

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

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Terri Blunk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

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

Effect of Settlement and Reservation of Rights

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

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

61. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

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

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

General Provisions

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


65. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

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

RESPONDENT:
CITY OF RUSSELL, KANSAS

Date: 11/21/2017



Signature

Raymond C. Mader

Name

Mayor


Title

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

Date: 12/15/17


Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

Date: 12/15/17


Kelley Catlin
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

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

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

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Dec. 6, 2017
Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day, in the following manner, to the addressees:

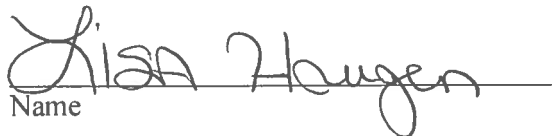
Copy via Email to Complainant:

Kelley Catlin

Copy via Email to Respondent:

Rich Krause, Public Works Director

Dated this Co th day of December, 2017.


Name