



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 09 2015

UNITED PARCEL SERVICE

Mr. James Cauley, Esq.
City Attorney
Cauley- Pridgen, P.A.
2500 Nash Street, Suite C
Wilson, North Carolina 27894-2367

Re: City of Wilson - Toisnot Water Treatment Facility
Consent Agreement and Final Order
Docket Number: CERCLA-04-2015-2004(b)

Dear Mr. Cauley:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Comprehensive Environmental Response, Compensation, and Liability Act matter (Docket No. CERCLA-04-2015-2004(b) involving the City of Wilson. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of filing.

If you have any questions, please call Lucia Mendez at (404) 562-9637.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney

Chief

Chemical Safety and Enforcement Branch

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
City of Wilson)
Wilson, NC)
)
Respondent)
_____)

) Docket Number: CERCLA-04-2015-2004(b)

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CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609, and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is the City of Wilson.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA to the Regional Administrators by EPA Delegations 14-31, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is the City of Wilson, a municipality operating within the city of Wilson in the State of North Carolina.

5. Respondent is a "person" and "the owner or operator" of a "facility," as those terms are defined in Sections 101(21) of CERCLA, 42 U.S.C. § 9601(9), Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

6. Respondent's facility, the City of Wilson Water Treatment Plant, is located at 800 Pine Street NE, Wilson, NC, 27893.

III. EPA's Allegations of Violations

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list, which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Respondent was in charge of the facility on May 14, 2014.

10. Sodium hydroxide is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 1,000 pounds, as specified in 40 C.F.R. § 302.4.

10. On May 14, 2014, Respondent's facility had a release of sodium hydroxide above the RQ.

11. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of sodium hydroxide in an amount equal to or greater than its RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

12. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after December 6, 2013. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

IV. Consent Agreement

13. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above, but neither admits nor denies the factual allegations set out above.

14. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

15. Respondent consents to the assessment of, and agrees to pay, the civil penalty as set forth in this CAFO.

16. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

17. Respondent certifies that as of the date of execution of this CAFO, it is in compliance with all relevant requirements of CERCLA.

18. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

19. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA.

V. Final Order

20. Respondent shall pay a CERCLA civil penalty of ONE THOUSAND ONE HUNDRED THIRTEEN DOLLARS (\$1,113) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

21. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979076
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

22. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mrs. Kerry Platt
U.S. EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

23. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

24. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than FOUR THOUSAND ONE HUNDRED SEVENTY TWO DOLLARS (\$4,172) for the purchase of the following equipment and donation to the Wilson County Local Emergency Planning Committee:

<u>Quantity</u>	<u>Description</u>
2 Pallets	Oil Absorbent Booms, 8 inches Diameter by 10 Feet Long 4 booms per case (40'), Absorbs 30 gal per case, Weight 522 lbs, Color: White, Pallet 12 cases;
8 Pallets	Chemical Spill Absorbent Booms, 8" x 10", Yellow, 4/case (40'), Absorbs 33.9 gal/case, Pallet 12 cases;
6 Cases	PADS, YELLOW HAZMAT, BONDED, 15" X 19", HEAVY WEIGHT, 100/CASE;
8 Cases	PADS, OIL-ONLY WHITE, BONDED, HEAVY WEIGHT, 15" X 19", 100/CASE;
1 Item	Shipping Included.

25. This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to the Agreement.

26. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

27. Respondent has obtained and presented to EPA a separate written Certification from the recipient of the SEP, the Wilson County Local Environmental Planning Committee, stating that it is not a party to any open federal financial assistance transaction as stated in paragraph 26.

28. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP in accordance with Paragraph 24.

29. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of FOUR THOUSAND ONE HUNDRED SEVENTY TWO DOLLARS (\$4,172), Respondent shall pay to the United States a stipulated penalty of the difference between \$4,172 and the actual amount expended on the SEP.

30. For purposes of Paragraph 29, the determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

31. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state, or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

32. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)."

33. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the Chemical Management and Emergency Planning Section, to the attention of Kerry Platt at the address provided above. The Report shall include the following:

- (a) an affidavit from an authorized city official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoice receipts, showing a total expenditure of no less than \$4,172, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 24; and
- (c) documentation proving that the equipment was donated to and received by the Wilson County Local Environmental Planning Committee.

Respondent shall send EPA any additional documentation requested by EPA.

34. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

35. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

36. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

37. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

39. This CAFO shall be binding upon the Respondent, its successors, and assigns.

40. The following individual is authorized to receive service for EPA in this proceeding:

Verne H. George
U.S. EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

41. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

VI. Effective Date

42. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

City of Wilson

By: *Harry E. Tyson* Date: *3/19/2015*

Name: *Harry E. Tyson* (Typed or Printed)

Title: *Deputy City Manager* (Typed or Printed)

U.S. Environmental Protection Agency

By: *Carol G. Kamber* Date: *4/13/15*

Beverly H. Banister

Director

Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this *27th* day of *May*, 2015.

Carol F. Baschon

Carol F. Baschon

Acting Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of, City of Wilson, Docket Number: CERCLA-04-2015-2004(b) on the parties listed below in the manner indicated:

Verne H. George
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Lucia Mendez
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

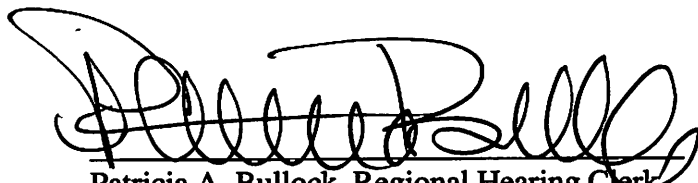
Robert Caplan
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

James P. Cauley
Cauley-Pridgen, P.A.
2500 Nash Street N, Suite C
Wilson, North Carolina 27894-2367

(Certified Mail—Return Receipt Requested)

Date: 6-9-15



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511