



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**NOV 17 2010**

REPLY TO THE ATTENTION OF:  
**SC-6J**

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

Scott Huizenga,  
City Administrator  
City of East Grand Forks, Minnesota  
600 Demers Ave  
East Grand Forks, Minnesota 56721

Re: City of East Grand Forks, Minnesota, Consent Agreement and Final Order.  
Docket No. **CAA-05-2011-0007**

Dear Mr. Huizenga:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on NOV 17 2010. Please pay the civil penalty in the amount of \$42,000 in the manner prescribed in paragraphs 33 - 35 and reference your check with the number BD 2751103A007 and the docket number.

Please feel free to contact Greg Chomycia at [chomycia.greg@epa.gov](mailto:chomycia.greg@epa.gov) or (312)353-8217, if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Guenther at [guenther.robert@epa.gov](mailto:guenther.robert@epa.gov) or (312)886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	
	)	DOCKET NO.: CAA-05-2011-0007
CITY OF EAST GRAND FORKS, MN,	)	
	)	PROCEEDING TO ASSESS
RESPONDENT.	)	A CIVIL PENALTY UNDER
	)	SECTION 113(d) OF THE
EPA ID: 1000 0007 7957	)	CLEAN AIR ACT,
_____	)	42 U.S.C. § 7413(d)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1), and sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).

2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

3. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

4. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

2010 NOV 1 AM 11:13  
REGIONAL PLANNING CLERK  
U.S. EPA REGION 5

### **JURISDICTION AND WAIVER OF RIGHT TO HEARING**

5. Respondent stipulates that the United States Environmental Protection Agency (EPA) has jurisdiction over the subject matter of this CAFO, and waives any jurisdictional objections it may have. Respondent neither admits nor denies Complainant's findings of fact and conclusions of law set forth in paragraphs 21 through 31 of this CAFO.

6. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **STATUTORY AND REGULATORY BACKGROUND**

7. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator of EPA to issue regulations regarding the prevention and detection of accidental releases of designated chemicals. This section further requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to detect, prevent or minimize risks of accidental releases of those designated substances.

8. Pursuant to section 112(r)(7)(A) and (B) of the CAA, 42 U.S.C. § 112(r)(7)(A) and (B), the Administrator promulgated the Chemical Accident Pollution Prevention rule on January 31, 1994. This rule is codified at 40 C.F.R. part 68 and has been modified from time to time since.

9. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner and operator of a stationary source with a process subject to Program 3, as defined at 40 C.F.R. § 68.10(d), to develop and implement a management system as required by 40 C.F.R. § 68.15, conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 to 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 to 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95. These requirements are collectively known as the “Risk Management Program.”

10. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.10(d), defines a Program 3 process as one which does not meet the requirements of a Program 1 process found at 40 C.F.R. § 68.10(b) and is subject to the process safety management standard at 29 U.S.C. § 1910.119.

11. The Chemical Accident Pollution Prevention rule, at 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.”

12. The Chemical Accident Pollution Prevention rule, at 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 substances, or combination of those activities. ... ”

13. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “regulated substance” as “ ... any substance listed pursuant to section 112(r)(3) of the Clean Air Act ... in [40 C.F.R.] § 68.130.”

14. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “ ... any person who owns, leases, operates, controls or supervises a stationary source.”

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “threshold quantity” as “ ... the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act ... , 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. ... ”

16. The Chemical Accident Pollution Prevention rule, in Tables 1 and 2 referenced in 40 C.F.R. § 68.130, lists chlorine as a regulated toxic substance with a threshold quantity of 2,500 pounds.

17. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r)(7), it is unlawful for any person to operate any stationary source in violation of such requirement.

18. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), provides that the Administrator may issue an administrative order against any person assessing civil administrative penalties of up to \$25,000 per day of violation, to a maximum of \$200,000, whenever the Administrator finds that person has violated a requirement of subchapter I of the CAA, including a requirement of any rule promulgated under that subchapter.

19. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19 increased the statutory maximum penalty under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to \$32,500 per day of violation effective March 15, 2004, through January 12, 2009, to a maximum of \$270,000, and \$37,500 per day of violation after January 12, 2009, to a maximum of \$295,000.

20. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21. Complainant is, by lawful delegation, the Director of the Superfund Division, EPA Region 5.

22. Respondent is the City of East Grand Forks, Minnesota, a municipality organized under the laws of the State of Minnesota, and is thus a "person" according to section 302(e) of the CAA, 42 U.S.C. § 7602(e).

23. At all times relevant to this Complaint, Respondent owned, operated, controlled and supervised a facility located at 11801 2<sup>nd</sup> Street NE, East Grand Forks, Minnesota (the Facility), which includes buildings, structures, equipment, installations, which belong to the same industrial group, are located on one or more contiguous properties and which are under the control of Respondent. Respondent's Facility stores

and uses chlorine (CAS No. 7782-50-5), a regulated substance, in a process to disinfect drinking water prior to its distribution.

24. Respondent's Facility in East Grand Forks is a "stationary source" as that term is defined in 40 C.F.R. § 68.3.

25. Respondent is an "owner or operator" of the Facility as that term is used in 40 C.F.R. § 68.3.

26. Respondent's Facility maintained chlorine in quantities exceeding 2,500 pounds during calendar years 1999 through 2010, and thus maintained a hazardous substance in quantities exceeding a threshold quantity under the Chemical Accident Pollution Prevention rule.

27. Respondent's processes subject it to the Program 3 requirements because the distance to a public receptor, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the process is subject to the process safety management standard at 29 U.S.C. § 1910.119.

28. On September 21, 2009, the Administrator and the Attorney General of the United States, each through their respective delegates, jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **SPECIFIC ALLEGATIONS OF LIABILITY**

29. On June 4, 2008, Respondent's Risk Management Program for the Facility, prepared pursuant to 40 C.F.R. § 68.12(d), failed to include numerous elements

required by those regulations. A table listing the deficiencies in Respondent's Risk Management Program at the Facility is attached as Table A.

30. Respondent's failure to develop and implement a complete Risk Management Program at the Facility is a violation of the requirements of 40 C.F.R. § 68.12(d).

31. Respondent's violation of 40 C.F.R. § 68.12(d) constitutes the unlawful operation of a stationary source subject to a regulation or requirement promulgated under section 112(r) of the CAA, 42 U.S.C. § 7412(r), and authorizes the Administrator to seek penalties pursuant to section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

#### **CIVIL PENALTY**

32. Based on an analysis of the factors as specified in section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation in quickly resolving this matter and other factors as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is \$42,000.

33. Within 30 days after the effective date of this CAFO, Respondent must pay the \$42,000 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

34. The check must note the following: the case caption, the docket number of this CAFO and the billing document number to be assigned by EPA upon filing of this CAFO.

35. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Greg Chomycia (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Robert S. Guenther (C-14J)  
Office of Regional Counsel  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than

30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

### **GENERAL PROVISIONS**

39. This CAFO resolves only Respondent's liability and any liability of Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, employees, agents, servants, successors and assigns for federal civil penalties for the violations alleged in the CAFO.

40. This CAFO does not 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.

41. This CAFO does not affect Respondent's responsibility to comply with the CAA or other applicable federal, state and local laws or regulations.

42. This CAFO is a "final order" for purposes of EPA's enforcement response policy for section 112(r) of the CAA.

43. The terms of this CAFO bind Respondent, Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, employees, agents, servants, successors and assigns.

44. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

46. This CAFO constitutes the entire agreement between the parties.

**City of East Grand Forks, Minnesota, Respondent**

10-20-2010  
Date

Lynn Strauss  
Lynn Strauss  
Mayor  
City of East Grand Forks, Minnesota

**Environmental Protection Agency, Complainant**

11/4/10  
Date

Richard C. Karl  
Richard C. Karl  
Director  
Superfund Division

In the Matter of:  
City of East Grand Forks, Minnesota  
Docket No: CAA-05-2011-0007

In the Matter of:  
City of East Grand Forks, Minnesota  
Docket No: CAA-05-2011-0007

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: 11-10-10

By: \_\_\_\_\_

  
Susan Hedman  
Regional Administrator  
Environmental Protection Agency  
Region 5

East Grand Forks Water Treatment  
Table A

Citation	Dates	Description
<b>Management System</b>		
68.15(a)	6/4/04 to 6/4/08	Failure to develop a management system to oversee implementation of the Risk Management Program
68.15(c)	6/4/04 to 6/4/08	Failure to document responsibility for implementing individual requirements of the Risk Management Program
<b>Hazard Assessment</b>		
68.22(e), 25(b)	6/4/04 to 6/4/08	Failure to properly conduct the worst case scenario
68.36(a)	6/21/04 to 6/4/08	Failure to review and update the offsite consequence analysis
68.39(a, b & e)	6/4/08	Failure to maintain offsite consequence analysis documentation
<b>Prevention Program</b>		
<b>Process Safety Information</b>		
68.65(c)(1)(ii)	6/4/08	Failure to document process chemistry
68.65(c)(1)(iv)	6/4/08	Failure to document the safe upper and lower limits for parameters (temperature and pressure)
68.65(c)(1)(v)	6/4/08	Failure to perform and evaluation of the consequences of deviation from safe parameters
68.65(d)(1)(iii)	6/4/08	Failure to document the electrical classification of the process
68.65(d)(1)(iv)	6/4/08	Failure to document the relief system design
68.65(d)(1)(v)	6/4/08	Failure to document the ventilation system design
68.65(d)(1)(vi)	6/4/08	Failure to document the design codes and standards employed to build and operate the process
68.65(d)(1)(viii)	6/4/08	Failure to have information regarding the safety systems of the process
68.65(d)(2)	6/4/08	Failure to document that equipment complies with recognized and generally accepted good engineering practices
<b>Process Hazard Analysis</b>		
68.67	6/4/04 to 6/4/08	Failure to perform an initial process hazard analysis
<b>Operating Procedures</b>		
68.69	6/4/04 to 6/4/08	Failure to develop and implement written operating procedures
<b>Training</b>		
68.71(a)	6/4/04 to 6/4/08	Failure to train each employee in the written operating procedures developed in 40 C.F.R. § 68.69
<b>Mechanical Integrity</b>		
68.73(b)	6/4/04 to 6/4/08	Failure to establish and implement written procedures to maintain the ongoing integrity of the process
68.73(d)(1)	6/4/04 to 6/4/08	Failure to perform required inspection and tests on the chlorine gas scrubber
68.73(d)(2)	6/4/04 to 6/4/08	Failure to inspect and test the chlorine gas scrubber following good engineering practices

68.73(d)(3)	6/4/04 to 6/4/08	Failure to inspect and test process equipment on a frequency consistent with good engineering
68.73(d)(4)	6/4/08	Failure to document inspections and test performed on process equipment
68.73(f)(1)	6/4/08	Failure to assure that equipment is suitable for the process application
68.73(f)(2)	2007 to 6/4/08	Failure to perform appropriate checks to assure that equipment was installed properly
68.73(f)(3)	2007 to 6/4/08	Failure to assure that maintenance materials were suitable for the process application for which they are used
<b>Management of Change</b>		
68.75(a)	6/4/04 to 6/4/08	Failure to establish written procedures to manage changes to the disinfection process
68.75	2007 to 6/4/08	Failure to manage changes in the process (installation of a new chlorine analyzer) to assure that the equipment was safe, compatible with the current system, and failure to conduct training of employees, update safety information and failure to develop written operating procedures to cover the operation of the new analyzer
68.75	2007 to 6/4/08	Failure to manage changes in the process (installation of a new chlorine feed system) without assuring that the equipment was safe, compatible with the system, and without proper training of employees, updating safety information or writing operating procedures to cover operation of the new feed system
<b>Compliance Audit</b>		
68.79	6/5/05 to 6/4/08	Failure to perform an audit of the Prevention Program for the time period 6/5/05 through 6/4/08
68.79	6/4/04 to 6/4/08	Failure to perform an audit of the Prevention Program for the time period 6/5/02 through 6/4/05
<b>Employee Participation</b>		
68.83	6/4/04 to 6/4/08	Failure involve employees in the development of the prevention program
<b>Contractors</b>		
68.87(b)(1)	6/4/08	Failure to obtain and evaluate the safety information of contractors working on or around the process
68.87(b)(2)	6/4/08	Failure to inform contractors of the known hazards of the process
68.87(b)(3)	6/4/08	Failure to inform contractor of the emergency response program