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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. CAA-07-2013-0005
)
CITY OF INDEPENDENCE, KANSAS,)
)
)
) CONSENT AGREEMENT AND
) FINAL ORDER
Respondent,)
)
)
Proceeding under Section 113(d) of the)
Clean Air Act, 42 U.S.C. § 7413(d))
_____)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 ("EPA") and the City of Independence, Kansas ("Respondent") have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This 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, where 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 ("CA/FO") serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required

by Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, and that Respondent is therefore in violation of Section 112(r) of the CAA. Furthermore, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The 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. The Respondent is the City of Independence, Kansas. This action involves the water treatment plant located at 520 East Oak Street in Independence, which is owned and operated by the City of Independence.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of 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 the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the 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, 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). These regulations require owners and operators of stationary sources to develop and implement a Risk Management Program that includes a 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 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 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. 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 the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

Definitions

10. 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.

11. 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, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. 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.

13. 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.

Alleged Violations

14. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA, as follows:

15. 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).

16. Respondent’s water treatment plant located at 520 East Oak Street in Independence, Kansas, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. 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, Table 1, is 2,500 pounds.

18. On or about May 3, 2011, EPA conducted an inspection of Respondent's water treatment plant to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

19. Information collected during the inspection showed that Respondent has exceeded the threshold quantity for chlorine at the water treatment plant.

20. Respondent is 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 is an owner and operator of stationary sources that had more than a threshold quantity of a regulated substance in a process.

21. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a Risk Management Program that includes a management system, a hazard assessment, a prevention program and an emergency response program.

22. Information collected during the inspection of Respondent's water treatment plant revealed that Respondent failed to develop and implement a Risk Management Program that complied with all the requirements of 40 C.F.R. Part 68. Specifically:

- (a) Respondent failed to develop a management system to oversee the implementation of the risk management program elements, as required by 40 C.F.R. § 68.15(a);
- (b) Respondent failed to review and update the offsite consequence analyses at least once every five years, as required by 40 C.F.R. § 68.36(a);
- (c) Respondent failed to estimate in the RMP the population within a circle with its center at the point of the release, as required by 40 C.F.R. § 68.30(a);
- (d) Respondent failed to compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment, including safe upper and lower temperatures, pressures, flows, and compositions, as required by 40 C.F.R. § 68.48(a)(3);
- (e) Respondent failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.48(b);

- (f) Respondent failed to conduct a review of the hazards associated with the regulated substances, process, and procedures, as required by 40 C.F.R. § 68.50(a);
- (g) 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 required by 40 C.F.R. § 68.52(a);
- (h) Respondent failed to certify that compliance with the provisions of Subpart C have been evaluated at least every three years, as required by 40 C.F.R. § 68.58(a);
- (i) Respondent failed to provide in the RMP an executive summary that includes the five-year accident history and planned changes to improve safety, as required by 40 C.F.R. § 68.155(d) and (f);
- (j) Respondent failed to correct the RMP to include any accidental release meeting the five-year accident history reporting criteria of 68.42 within six months of the release or by the time the RMP is updated under § 68.190, whichever is earlier, as required by § 68.195(a); and
- (k) Respondent failed to correct the RMP within one month of any change in the emergency contact information required under § 68.160(b)(6), as required by 40 C.F.R. § 195(b).

23. Respondent's failure to comply with the requirements of 40 C.F.R. Part 68, as set forth above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

29. This CA/FO addresses all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

30. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

31. The effect of settlement described in Paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 30 of this CA/FO.

32. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental and/or public health benefits. Respondent shall install a video surveillance system at Respondent's water treatment plant, to better ensure the safety of the chlorine stored at Respondent's facility, as described more specifically in the Scope of Work (attached hereto as Attachment A and incorporated herein by reference).

33. The total expenditure for the SEP shall be no less than \$16,495, in accordance with the specifications set forth in the Scope of Work, and the SEP shall be completed no later than 180 days from effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

34. Within thirty days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA at the address specified in Paragraph 35. The SEP Completion Report shall contain the following:

- (a) A detailed description of the SEP as implemented;
- (b) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks; and
- (c) Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO.

35. Respondent shall submit all notices and reports required by this CA/FO by first class mail to the following:

Patricia Reitz
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

36. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

37. Respondent agrees to the payment of stipulated penalties as follows:

- (a) In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in Paragraphs 32 and 33 of this CA/FO and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP described in Paragraphs 32 and 33 of this CA/FO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. Except as provided in subparagraph (a)ii. and (a)iii. of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraphs 32 and 33 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Nineteen Thousand Seven Hundred Ninety-Four Dollars (\$19,794), minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP.
 - ii. If Respondent fails to timely and completely submit the SEP Completion Report required by Paragraph 34, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250).
 - iii. If the SEP is not completed in accordance with Paragraphs 32 and 33 of this CA/FO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- (b) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- (c) Respondent shall pay stipulated penalties not more than fifteen days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 1 of the Final Order portion of this CA/FO. Interest and late charges shall be paid as stated in Paragraph 42 herein.

38. Respondent certifies that it 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 agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

39. Respondent certifies that it is not 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 performance period has not yet expired.

40. 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.

41. 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 enforcement action taken by the United States Environmental Protection Agency for violations of the chemical accident prevention provisions of the Clean Air Act and underlying regulations."

42. Late Payment Provisions. 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 37 above 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

43. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

44. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 *et seq.*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Four Thousand One Hundred Twenty-Nine Dollars (\$4,129) within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CAA-07-2013-0005.

2. Copies of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Erin Weekley
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal tax purposes, nor for state or local tax purposes where such a deduction is prohibited by applicable tax laws.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 12-31-12

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

Date 1/2/2013

Erin Weekley
Erin Weekley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
CITY OF INDEPENDENCE, KANSAS

Date 12-10-12

Rick Mott
Name
X [Signature]
Signature
MAYOR
Title



IT IS SO ORDERED. This Final Order shall become effective immediately.

Date 1/15/13

Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

ATTACHMENT A - SCOPE OF WORK



K-TECH, LLC
829 N. PENN
INDEPENDENCE, KS 67301
(620) 331-1774

November 5, 2012

City of Independence
Water Plant & Park Area
Independence, KS 67301
620-331-6600

ATTN: Officer Chad Follmer
cfollmer@indypd.com

PROJECT: VIDEO SURVEILLANCE SYSTEM

Scope:

K-Tech System will install IP Base Network Video Surveillance System at your water plant and park facility. This system will be laid out in the following 2 Proposals.

PROPOSAL A: PLANT SURVEILLANCE

K-Tech System will install a Network Video Surveillance System at the Water Plant and connect the following 7 cameras at this location. This Proposal Head End Server is capable of handling both proposal A & B. Please see below for details:

◆ Head End Equipment

- Chenbro Server This server is sized for both proposals.
- 2TB Hard Drive (2) for a total of 4TB for approximately 30 days of storage at 5fps and 80% motion on all 7 cameras.
- Exacq Video Management Software Pro
- Exacq Camera License (7)
- 22" Color Monitor
- 8 Port PoE Switch
- Rocket M Wireless Base Station (Points towards site #1)
- 120 Degree Antenna for above station
- Nanostation NSM5 Point to Point Network (Points towards site #10)
- Power Supply for above wireless devices
- Use Customers existing Rack and UPS.

1. The investment and equipment listed above includes all parts, labor, cable, hardware, and etc. necessary for a professional installation.
2. All parts and labor are covered by a ONE YEAR WARRANTY.
3. This proposal is valid for 30 days from date above.
4. Tax is not included in the above proposal

ATTACHMENT A - SCOPE OF WORK

- ◊ Building Cameras
 - Camera 1: ACTi TCM-3111 Dome Camera mounted in main lobby which is a H.264 megapixel camera with a fix 4.2mm lens and up to 18fps at 1280x1024 resolutions.
 - Camera 2: ACTi TCM-1111 Bullet Camera mounted on loading dock looking at tanks which is a H.264 megapixel camera with a fix 4.2mm lens and up to 18fps at 1280x1024 resolutions and mounted on a wall bracket.
- ◊ Site 1
 - Nanostation NSM5 and Power Supply pointed toward Base Station.
 - Weather Proof J-Box that equipment and cameras will attach to.
 - 15amp Fuse Disconnect
 - Duplex Receptacle
 - 120 Volt Surge Protector
 - 4Port Outdoor Rated PoE Switch
 - Pole Mount Adapter
 - PoE Surge Protector (4)
 - Camera 3: IQA32NE-B5 HD1080P Meg Dome Camera with a 3-13mm lens that will record up to 30fps or 1920x1080 resolution
 - Camera 4 and 5: IQA33NE-B5 3.1 Meg Dome Camera with a 3-13mm lens that will record up to 20fps at 2048x1536 resolutions
- ◊ Site 10
 - Nanostation NSM5 and Power Supply points towards main plant.
 - Weather Proof J-Box that main equipment attaches to
 - 15amp Fuse Disconnect
 - 120 Volt Surge Protector
 - 4Port Outdoor Rated PoE Switch
 - PoE Surge Protector (3)
 - Nanostation NSM5 and Power Supply points toward Camera 6
 - Camera 7: IQA32NE-B5 HD1080P Meg Dome camera with a 3-13 lens that will record up to 30fps at 1920x1080 resolutions.
 - Camera 6: AIQA33NE-B5 3.1 Meg Dome Camera with a 3-13mm lens that will record up to 20fps at 2048x1536 resolutions.
 - Camera 6: Weatherproof J-Box
 - 15amp Fuse Disconnect
 - Duplex Receptacle
 - 120Volt Surge
 - Nanostation NSM5 and Power Supply. (Points toward Site 10 Base Station)
 - Pole Mount Adapter
 - PoE Surge Protector (1)
 - 24VAC Transformer and Surge Protector
- ◊ Complete Programming, Set Up and Training.

THE TOTAL FOR ABOVE PROPOSAL A IS \$16,495.00

1. The investment and equipment listed above includes all parts, labor, cable, hardware, and etc. necessary for a professional installation.
2. All parts and labor are covered by a **ONE YEAR WARRANTY**.
3. This proposal is valid for 30 days from date above.
4. Tax is not included in the above proposal.

IN THE MATTER OF City of Independence, Kansas, Respondent
Docket No. CAA-07-2013-0005

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Erin Weekley
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Mail to:

The Honorable Rick Mott
Mayor
City Hall
120 N. 6th Street
Independence, Kansas 67301

Dated: 1/15/13



Kathy Robinson
Hearing Clerk, Region 7