

JUN 28 2017



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

RECEIVED  
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<b>In the Matter of</b>	)	<b>U.S. EPA Docket No.: CERC-03-2017-0137</b>
	)	
<b>Henrico County</b>	)	
<b>4301 East Parham Road</b>	)	
<b>Henrico, Virginia 23228,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	<b>Proceedings Pursuant to Section 103</b>
<b>Henrico Public Utilities</b>	)	<b>of the Comprehensive Environmental</b>
<b>Water Reclamation Facility</b>	)	<b>Response, Compensation and Liability</b>
<b>9101 WRVA Road</b>	)	<b>Act, 42 U.S.C. § 9603</b>
<b>Henrico, Virginia 23231,</b>	)	
	)	
<b>Facility.</b>	)	
	)	

**CONSENT AGREEMENT**

**STATUTORY AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9603. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has redelegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant"). Further, this Consent Agreement is proposed and entered into under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

**JURISDICTION**

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(7).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement.

**FACTUAL ALLEGATIONS AND  
CONCLUSIONS OF LAW**

4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

**FINDINGS OF FACT**

5. Henrico County (“Respondent”) has its main office at 4301 E. Parham Road, Henrico, Virginia 23228.
6. As a county, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. §§ 302.3.
7. Henrico County owns and operates the Henrico Public Utilities Water Reclamation Facility located at 9101 WRVA Road, Henrico, Virginia (“the Facility”). At all times relevant to this CA/FO, Respondent has been in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.
8. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3.
9. On March 31, 2016, EPA representatives conducted an inspection of the Facility to determine Respondent’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302, 303, 311 and 312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11002, 11003, 11021, 11022.
10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the 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 to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of

CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

11. On October 22, 2015, during the transfer of sodium hypochlorite solution from a bulk storage tank to a day tank, the Facility released approximately 463 pounds of sodium hypochlorite, Chemical Abstracts Services (“CAS”) No. 7681-52-9, from the underground PVC transfer line connecting the tanks (“October 22 Release”). Again, on October 27, 2015, between 8:00 a.m. and 9:30 a.m., during another transfer between the bulk tank and the day tank, the Facility released approximately 962 pounds of sodium hypochlorite the same failed transfer line (“October 27 Release”).

12. Between October 28 and October 30, 2015, Respondent conducted a pressure test of the PVC transfer line, which confirmed that the line could not hold pressure, indicating that the line was broken. At this time, Respondent determined that between 2,494 to 4,987 pounds of sodium hypochlorite was missing.

13. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

14. Sodium hypochlorite is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

15. The October 22 and October 27 Releases from the Facility constitute releases of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

16. The October 22 and October 27 Releases were not “federally permitted releases” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

17. Respondent knew or should have known that the Facility had released quantities of sodium hypochlorite exceeding its RQ on October 30, 2015.

18. Respondent never notified the NRC of the October 22 Release.

19. Respondent did not notify the NRC of the October 27 Release until 11:25 am on November 2, 2015.

20. Respondent failed to immediately notify the NRC of the October 22 and October 27 Releases as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

### CONCLUSION OF LAW

21. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

### SETTLEMENT

22. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusion of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$22,281.00**.

23. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

### PAYMENT TERMS

24. The Civil Penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of **\$22,281.00** no later than thirty (30) days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent, by either cashier's check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

25. Payment of the civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CERC-03-2017-0137;
- b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
- c. Payment for the civil penalty made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
Contact: Craig Steffen,  
(513) 487-2091  
steffen.craig@epa.gov

- d. Payment for the civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Government Lockbox 979076  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Craig Steffen,  
(513)487-2091  
steffen.craig@epa.gov

- e. Payment made by check in any currency drawn on banks with no U.S. branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. Payment made by electric wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary: US Environmental Protection Agency

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- g. Electronic payment made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
REX, 1-866-234-5681

h. On-Line Payment Option:

<https://www.pay.gov/public/home>

- You **DO NOT** need a user name and password or account.
- Enter **SFO 1.1** in the form search box on the top left side of the screen.
- Open the form and follow the on-screen instructions.
- Select your type of payment from the "Type of Payment" drop down menu.
- Based on your selection, the corresponding line will open and no longer be shaded gray.
- Enter the docket number, invoice number or other corresponding information into the field.

i. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

26. Respondent shall submit proof of the penalty payment, noting the title and docket number of this case, to the following persons:

Lydia Guy (3RC00) Regional Hearing Clerk U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029	and	Allison F. Gardner (3RC60) Associate Regional Counsel U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029
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27. The CERCLA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment in accordance with this CA/FO or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

29. In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this fully executed CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

30. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the penalties become due and payable and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

31. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

32. Failure by the Respondent to pay the CERCLA civil penalty assessed by the Final Order in full in accordance with this CA/FO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

### **GENERAL PROVISIONS**

33. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609.

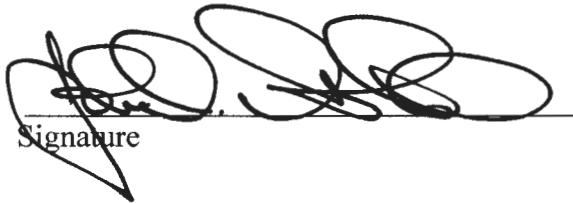
34. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to

legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

35. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

36. Each party to this action shall bear its own costs and attorney's fees.

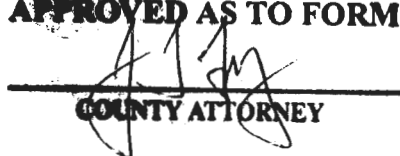
FOR HENRICO COUNTY

  
Signature

5/24/2017  
DATE

Print Name

Title

**APPROVED AS TO FORM**  
  
**COUNTY ATTORNEY**



**APPROVED AS FOLLOWS**

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**COUNTY ATTORNEY**

In Re: Henrico County

CERC-03-2017-0137

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



\_\_\_\_\_  
Karen Melvin, Director  
Hazardous Site Cleanup Division

JUN 22 2017

\_\_\_\_\_  
DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

<b>In the Matter of</b>	)	<b>U.S. EPA Docket No.: CERC-03-2017-0137</b>
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<b>Henrico County</b>	)	
<b>4301 East Parham Road</b>	)	
<b>Henrico, Virginia 23228,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	<b>Proceedings Pursuant to Section 103</b>
<b>Henrico Public Utilities</b>	)	<b>of the Comprehensive Environmental</b>
<b>Water Reclamation Facility</b>	)	<b>Response, Compensation and Liability</b>
<b>9101 WRVA Road</b>	)	<b>Act, 42 U.S.C. § 9603</b>
<b>Henrico, Virginia 23231,</b>	)	
	)	
<b>Facility.</b>	)	
	)	

**FINAL ORDER**


Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Henrico County have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Sections 301, 311 and 312 of the Emergency Planning and Community Right-to-Know Act And Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999)*, and the statutory factors set forth in Section 109(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9603(a)(3).

**NOW, THEREFORE, PURSUANT TO** Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-TWO THOUSAND TWO HUNDRED EIGHTY-ONE (\$22,281)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

June 27, 2017  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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Henrico County )  
4301 East Parham Road )  
Henrico, Virginia 23228 ) Proceedings Pursuant to Section 103 of the  
) Comprehensive Environmental  
) Response, Compensation and Liability Act,  
) 42 U.S.C. § 9603  
)  
Respondent. )  
)

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (“CAFO”) in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CAFO was sent by certified mail to:

Denise M. Letendre, Esq.  
Henrico County  
4301 East Parham Road  
Henrico, Virginia 23228

6/28/2017  
Date

Catherine Mc Cool  
Catherine Mc Cool  
Lead Paralegal Specialist