UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	**Docket No. CAA-07-2016-0014**
Fort Dodge, Iowa d/b/a John T. Pray Facility 600 Phinney Park Drive Fort Dodge, Iowa 50501	)	**CONSENT AGREEMENT AND FINAL ORDER**
Respondent	)	

PRELIMINARY STATEMENT

The United States Environmental Protection Agency, Region 7 ("EPA") and the city of Fort Dodge, Iowa ("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

Parties

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

2. Respondent is a municipality which is the owner and/or operator of a public water treatment facility that uses chlorine in its water treatment process. The amount of chlorine on hand at the facility reaches as high as 9,000 pounds. This facility, known as the John T. Pray Water Treatment Plant, is located at 600 Phinney Park Drive, Fort Dodge, Iowa.

Statutory and Regulatory Requirements

3. On November 15, 1990, the President signed into law the Clean Air Act (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 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.

4. 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). This rule requires owners and operators of stationary sources to develop and implement a "Risk Management Program." The Risk Management Program must include a management system, a hazard assessment, a prevention program, an emergency response program and a Risk Management Plan.

5. The regulations at 40 C.F.R. § 68.150 require that the information necessary for a Risk Management Program be described in the Risk Management Plan ("RMP") which must be submitted to EPA.

6. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the 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.

7. The regulations at 40 C.F.R. § 68.10 set forth how the chemical accident prevention provision regulations apply to covered processes. A covered process is eligible for Program 3 if the process does not meet the requirements of Program 1 and if either the process falls under a specified North American Industry Classification System ("NAICS") code or the process is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

8. 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

9. 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.

10. 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.

11. 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.

12. 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.

Factual Background

13. Respondent is the owner and/or operator of a public water treatment facility that uses chlorine in its water treatment process. The amount of chlorine on hand at the facility is up to 9,000 pounds. The facility is located at 600 Phinney Park Drive, Fort Dodge, Iowa.

14. At all times relevant to this Consent Agreement and Final Order (CAFO), Respondent produced, processed, handled or stored chlorine at its above listed facility.

15. On or about August 27-28, 2013, EPA conducted an inspection of Respondent's facility to determine compliance with the Emergency Planning and Community Right-to-Know Act ("EPCRA"), the release reporting provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and Section 112(r) of the CAA and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that Respondent had greater than 2,500 pounds of chlorine in a process at the Respondent's facility.

Conclusions of Law

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, Table 1, is 2,500 pounds.

19. 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 a stationary source that had more than a threshold quantity of a regulated substance in a process.

Alleged Violations

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

20. From at least 1999 until May 2015, Respondent failed to develop a management system to oversee the implementation of the risk management program elements, assign a qualified person or position that has overall responsibility for the RMP, and document persons or positions, other than the qualified individual, who have been assigned responsibilities for implementing elements per 40 CFR § 68.15(a-c).

21. From at least June 2009 until May 2015, Respondent failed to review and update the offsite consequence analyses at least once every five years per 40 CFR § 68.36(a).

22. From at least June 2009 until May 2015, Respondent failed to maintain the records for the offsite consequences analyses per 40 CFR § 68.39(a-e).

23. From at least 1999 until May 2015, Respondent failed to compile written process safety information pertaining to the technology of the process that included process chemistry, consequences of deviation per 40 CFR § 68.65(c)(1)(ii & v), and information pertaining to the equipment in the process that included documentation that the equipment complies with recognized and generally accepted good engineering practices per 40 CFR § 68.65(d)(2).

24. From at least 1999 until May 2015, Respondent failed to establish a system to promptly address the process hazard analysis team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations or actions per 40 CFR § 68.67(e).

25. Between 2004 and May 2015, Respondent failed to update and revalidate the initial process hazard analysis at least every five years after its completion by a team meeting the requirements in § 68.67(d) to assure that the process hazard analysis is consistent with the current process per 40 CFR § 68.67(f).

26. Between 2004 and May 2015, Respondent failed to retain all PHAs and updates as well as resolutions for the life of the process per 40 CFR § 68.67(g).

27. From at least 1999 until May 2015, Respondent failed to develop and implement written operating procedures that provided clear instructions for safely conducting activities

involved in the covered process that addressed each operating phase, operating limits, safety and health considerations, and safety systems per 40 CFR § 68.69(a)(1-4).

28. Between 1999 and May 2015 Respondent failed to certify annually that the operating procedures are current and accurate per 40 CFR § 68.69(c).

29. From at least 1999 until May 2015, Respondent failed to develop and implement safe works practices to provide for opening process equipment or piping and control over entrance into a stationary source by maintenance, contractors, laboratory, or other support personnel per 40 CFR § 68.69(d).

30. From at least 1999 through May 2015, Respondent failed to provide refresher training at least every three years, and prepare a record which contains the identity of the employee, the date of training and the means used to verify that the employee understood the training per 40 CFR § 68.71(b-c).

31. From at least 1999 through May 2015, Respondent failed to establish and implement written procedures to maintain the ongoing integrity of process equipment per 40 CFR § 68.73(b).

32. From at least 1999 through May 2015, Respondent failed to document each inspection and test that has been performed on process equipment. The documentation did not identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the test or inspection was performed, a description of the test or inspection and the results of the inspection or test per 40 CFR § 68.73(d)(4).

33. From at least 1999 through May 2015, Respondent failed to assure that the construction of new plants and equipment, as it is fabricated, is suitable for the process application for which they will be used. There was also a failure to perform appropriate checks and inspections to assure that equipment was installed properly and consistent with design specifications and the manufacturer's instructions per 40 CFR § 68.73(f)(1&2).

34. From at least 1999 through May 2015, Respondent failed to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process and other elements of 40 CFR § 68.75(a-e).

35. From at least 1999 through May 2015, Respondent failed to perform a pre-startup safety review for modified stationary sources when the modification was significant enough to require a change in the process safety information and other elements of 40 CFR § 68.77(a-b).

36. From at least 1999 through May 2015, Respondent failed to certify that it has evaluated compliance with the provisions of Subpart D at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed. They also failed to have an audit conducted by at least one person knowledgeable in the process;

develop a report of the findings; promptly determine and document an appropriate response to the findings; document that deficiencies have been corrected and retain the two most recent compliance audit reports per 40 CFR § 68.79(a-e).

37. Since at least the year 2000, Respondent failed to prepare an investigation report at the conclusion of an incident investigation that included at a minimum the date of the incident, date investigation began, description of the incident, factors that contributed to the incident and any recommendations resulting from the investigation. It also failed to establish a system to promptly address and resolved any incident report findings; document any resolutions and corrective actions; review the report with all affected personnel and retain any reports for five years per 40 CFR § 68.81(d-g).

38. From at least 1999 through May 2015, Respondent failed to develop a written plan of action regarding the implementation of the employee participation required per 40 CFR § 68.83(a).

39. From at least 1999 through May 2015, Respondent failed to issue hot work permits for such work near covered processes per 40 CFR § 68.85(a).

40. From at least 1999 through May 2015, Respondent failed to develop and implement safe work practices consistent with § 68.69(d) to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas per 40 CFR § 68.87(b)(4).

41. From at least 1999 through May 2015, Respondent failed to provide an executive summary in the RMP that included a brief description of planned changes to improve safety per 40 CFR § 68.155(f).

42. From at least 1999 through May 2015, Respondent failed to review and update the RMP at least once every five years from the date of its initial submission or most recent update required by § 68.190(b)(2-7) per 40 CFR § 68.190(b)(1).

43. Respondent's failures to comply with 40 C.F.R. Part 68, as set forth above, are all violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

44. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

45. 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 CAFO.

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

47. 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 CAFO.

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

49. This CAFO addresses all civil and administrative claims for the CAA violations identified above, existing through the effective date of this CAFO. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

50. Respondent certifies by the signing of this CAFO 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.

51. The effect of settlement described in paragraph 49 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 50, above, of this CAFO.

52. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated civil penalty of Twenty Thousand Dollars ($20,000), as set forth in Paragraph 1 of the Final Order below, and shall perform a Supplemental Environmental Project ("SEP") as set forth in this CAFO.

53. 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 road that will allow emergency vehicles to safely access Respondent's facility and be outside of the 100 year flood plain. The surface of the road would be composed of approximately 5,500 square yards of asphalt at a cost of no less than Two Hundred Thousand Dollars ($200,000), in accordance with the Respondent's SEP Work Plan (attached hereto as Attachments A and B and are incorporated by reference).

54. The total expenditure for the SEP shall be no less than $200,000 and the SEP shall be completed no later than May 31, 2017. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

55. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

(i) A detailed description of the SEP as implemented; and

(ii) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks.

(iii) All reports shall be directed to the following:

Jodi Harper
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

56. 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.

57. Respondent agrees to the payment of stipulated penalties as follows: 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 above and/or to the extent that the actual expenditures of the SEP does not equal or exceed the cost of the SEP set forth in paragraph 54 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. If the SEP is not completed satisfactorily and timely, as required by this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Seventy-Five Thousand Dollars ($75,000), minus any documented expenditures determined by EPA to be acceptable for the SEP.

b. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 55, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars ($250) per day for each day said report is not submitted.

c. If the SEP is not completed in accordance with the terms of this CAFO, 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 percent 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

d. Where all elements of a SEP have been satisfactorily completed, but Respondent has expended less than the agreed-upon amount on the SEP, the EPA may, in its discretion, choose to reduce or waive stipulated penalties otherwise due under the settlement agreement.

58. 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. Complainant in its unreviewable discretion may waive or reduce any stipulated penalties.

59. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CAFO.

60. 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.

61. 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.

62. 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."

63. 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 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.

64. 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.

65. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

66. In accordance with 40 C.F.R. § 22.31(b), the Final Order shall become effective upon filing with the EPA Regional Hearing Clerk.

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 Twenty Thousand Dollars ($20,000) within 60 days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "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.

The payments shall reference docket number CAA-07-2016-0014.

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:

Raymond C. Bosch
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions in the Consent Agreement and shall be liable for any stipulated penalties for failure to complete such project as specified in the Consent Agreement.

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

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 4/22/16

Becky Weber
Director
Air and Waste Management Division

Date April 18, 2016

Raymond C. Bosch
Assistant Regional Counsel

RESPONDENT:
FORT DODGE, IOWA

Date March 15, 2016 By: [signature]

Matt Bemrich
Print Name

Mayor
Title

IT IS SO ORDERED.

In accordance with 40 C.F.R. § 22.31(b), this Order shall become effective upon filing with the EPA Regional Hearing Clerk.

Date 5-10-16 By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Attachment A - Supplemental Environmental Project (SEP) Description

Improve Emergency Access and Chlorine Delivery Access to John Pray Water Treatment Plant

The existing roads to the John Pray Water Treatment Plant are difficult for emergency vehicles and chlorine delivery vehicles to traverse, particularly fire trucks. In addition, part of the Phinney Park Drive access is in the flood plain and would be impassable during a 100 year flood event. Improving access roads for emergency vehicles will enhance the overall safety of the facility and enable faster, better and safer responses in the case of a facility or personnel emergency

The proposed SEP provides a primary access road for both chlorine deliveries and emergency vehicles to the back side of the water treatment plant. This project utilizes an existing railroad at grade crossing and construction of approximately 1300' asphalt roadway. This new roadway bypasses a railroad bridge underpass which currently prevents larger sized trucks from passing through. Chlorine deliveries will be able to make deliveries without making difficult backup maneuvers. The roadway will be constructed utilizing the highest elevations of the site and thus maintain access during flooding conditions.

A diagram of the road project is set forth in Attachment B.

ATTACHMENT B

IN THE MATTER Of Fort Dodge, Iowa d/b/a John T. Pray Facility, Respondent
Docket No. CAA-07-2016-0014

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 emailed to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to Respondent:

Matt Bemrich, Mayor
Fort Dodge, Iowa
d/b/a John T. Pray Facility
600 Phinney Park Drive
Fort Dodge, Iowa 50501

Dated: 5/10/16

Kathy Robinson
Hearing Clerk, Region 7