



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 16 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dominic Jones
Manager
Redrock Rural Water System
305 W. Whited Street
Jeffers, MN 65145

Re: Redrock Rural Water System, Windom, Minnesota
Consent Agreement and Final Order - Docket Nos. **MM-05-2009-0007**
EPCRA-05-2009-0029

Dear Mr. Jones:

CERCLA-05-2009-0010

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on SEP 16 2009

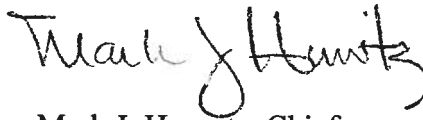
Please pay the CERCLA civil penalty in the amount of \$1,366.17, in the manner prescribed in paragraphs 51 and 53, and reference your check with the number BD 2750930B013 and docket numbers CERCLA-05-2009-0010
MM-05-2009-0007.

Please pay the EPCRA civil penalty in the amount of \$4,751.37, in the manner prescribed in paragraphs 52 and 53, and reference your check with the number BD 2750944E032 and docket numbers EPCRA-05-2009-0029
MM-05-2009-0007.

Your payments are due on October 16, 2009.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,



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

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Robert Smith
Office of Regional Counsel
U.S. EPA Region 5

Steve Tomylanovich
MN SERC (w/enclosure)

Marcy Toney (w/enclosure)
Regional Judicial Officer

RECEIVED

SEP 16 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

EPCRA-05-2009-0029

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:

Redrock Rural Water System
Jeffers, Minnesota

Respondent

) Docket No. CERCLA-05-2009-0010 MM-05-2009-0007
)
) Proceeding to Assess a Civil Penalty Under
) Section 109(b) of the Comprehensive
) Environmental Response, Compensation,
) and Liability Act, and Section 325(b)(2)
) of the Emergency Planning and Community
) Right-to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(b)(2) 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 (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Redrock Rural Water System, a public body formed under Minnesota Statute 116A doing business in the State of Minnesota.

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

5. 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. 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

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal and state agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the state emergency planning commission (SERC) of any state likely to be affected by a release

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

14. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, to \$32,500 per day of violation that occurred from March 16, 2004 through January 12, 2009; and to \$37,500 per day of violation that occurred on and after January 13, 2009.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 38951 County Road #4, Windom, Minnesota (facility).
19. At all time relevant to this CAFO, Respondent was in charge of the facility.
20. Respondent’s facility consists of a building, structure, installation, equipment, pipe or pipeline, well, pit, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.
21. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
22. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.
23. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
24. Chlorine CAS# 7782-50-5 is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
25. Chlorine CAS# 7782-50-5 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Chlorine CAS# 7782-50-5 is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

27. Chlorine CAS# 7782-50-5 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. At all times relevant to this CAFO, chlorine was produced, used or stored at Respondent’s facility.

29. Chlorine CAS# 7782-50-5 is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Chlorine CAS# 7782-50-5 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On August 7, 2008, at or about 6:00 a.m. Central Time, a release occurred from Respondent’s facility of approximately 10.15 pounds of chlorine (the release).

32. In a 24 hour time period, the release of 10.15 pounds of chlorine exceeded 10 pounds.

33. During the release, approximately 10.15 pounds of chlorine leaked, emitted, emptied, discharged, or escaped into the ambient air

34. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

36. Respondent had knowledge of the release on August 7, 2008, at approximately 6:35 a.m. Central Time.

37. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

39. The release was likely to affect Minnesota.

40. At all times relevant to this CAFO, the Minnesota Department of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. Respondent notified the NRC of the release on August 20, 2008, at 3:58 p.m.

42. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

43. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

44. Respondent notified the Minnesota SERC of the release on August 5, 2009.

45. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

46. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

47. Respondent provided written follow-up emergency notice of the release to the SERC on February 4, 2009.

48. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

49. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

50. EPA determined that Respondent's voluntary disclosure of the violations in this CAFO on August 27, 2008, did not satisfy the criteria to receive a penalty reduction pursuant to EPA's "Small Business Compliance Policy" (April 11, 2000) because they failed to timely correct the violation (criteria 3). EPA calculated an initial penalty calculation for these violations of \$61,175.40, which did not include any reductions. In consideration of Respondent's size of business, cooperation, willingness to quickly settle, and voluntary disclosure, EPA determined that an appropriate civil penalty to settle this action is \$6,117.54. Out of this \$6,117.54 civil penalty, \$1,366.17 is allocated for the one CERCLA violation and \$4,751.37 to the two violations of EPCRA. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainants also considered for both the initial and settlement penalty calculations, EPA's "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" (Enforcement Response Policy) (September 30, 1999).

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,366.17 civil penalty for the CERCLA violation.

[If payment by check]

Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

[for checks sent by regular U.S. postal service]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: "In the Matter of Redrock Rural Water System", the

CERCLA docket number CERCLA-05-2009-0010, the MM docket number

MM-05-2009-0007, and the CERCLA billing document number 2750930 B013.

[For electronic funds transfer]

Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: "In the Matter of Redrock Rural Water System", the CERCLA docket number CERCLA-05-2009-0010,

the MM docket number MM-05-2009-0007, and the CERCLA billing document number 2750930B013.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,751.37 civil penalty for the EPCRA violations.

[If payment by check]

Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. postal service]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: "In the Matter of Redrock Rural Water System", the EPCRA docket number EPCRA-05-2009-0029, the MM docket number

MM-05-2009-0007, and the EPCRA billing document number 2750944E032.

[for electronic funds transfer]

Respondent must pay the penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: "In the Matter of Redrock Rural Water System", the EPCRA docket number EPCRA-05-2009-0029, the MM docket number MM-05-2009-0007, and the EPCRA billing document number 2750944E032.

[for online payments using debit or credit card]

Respondent must pay online using ACH debit or credit card. For payments online using ACH debit or credit card please visit www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

53. If payment by check, a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket numbers and the billing document numbers must accompany the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

55. If Respondent does not timely pay the civil penalty, U.S. 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. 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 amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

57. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

58. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

59. Respondent certifies that it is complying with Section 103(a) of CERCLA 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

60. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA and other applicable federal, state and local laws, and regulations.

61. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA and Section 304 of EPCRA..

62. The terms of this CAFO bind Respondent and its successors, and assigns.

63. Each person signing this consent agreement 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.

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

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

action.

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

SIGNATORIES

**In the Matter of:
Redrock Rural Water System, Jeffers, Minnesota
Docket Nos.**

Redrock Rural Water System, Respondent

August 13, 2009
Date



Signature

Michael Kusley
Print Name

Chairman
Title

U.S. Environmental Protection Agency, Complainant

9-10-09
Date


Jason El-Zein, Acting Chief
Emergency Response Branch 1
Superfund Division

9-14-09
Date


Richard C. Karl, Director
Superfund Division

U.S. ENVIRONMENTAL
PROTECTION AGENCY

AUG 24 2009

OFFICE OF REGIONAL
COUNSEL

In the Matter of:

Redrock Rural Water System, Jeffers, Minnesota

Docket Nos. EPCRA-05-2009-0029 CERCLA-05-2009-0010 MM-05-2009-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/14/09
Date

Walter W. Karalich
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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REGION 5

**In the Matter of:
Redrock Rural Water System, Jeffers, Minnesota
Docket Nos.**


Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket numbers **EPCRA-05-2009-0029** **CERCLA-05-2009-0010**
MM-05-2009-0007
_____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Redrock Rural Water System by placing them in the custody of the United States Postal Service addressed as follows:

Dominic Jones, Manager
Redrock Rural Water System
305 W. Whited Street
Jeffers, MN 56145

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SEP 16 2009
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USEPA
REGION 5

on the 16th day of September, 2009.



Ruth McNamara
U.S. Environmental Protection Agency
Region 5