



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

AUG - 1 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David C. McLaughlin
Fluegel, Anderson, McLaughlin & Brutlag
25 NW 2nd Street, Suite 102
Ortonville, Minnesota 56278

Re: City of Ortonville, Ortonville, Minnesota, Consent Agreement and Final Order
Docket No. **CERCLA-05-2016-0010**

Dear Mr. McLaughlin:

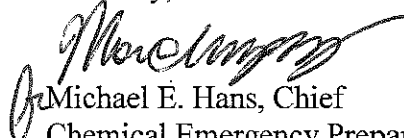
Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on August 1, 2016.

Please pay the CERCLA civil penalty in the amount of \$2,446 in the manner prescribed in paragraphs 27 and 28, and reference your check with the billing document number 2751630B010 and the docket number CERCLA-05-2016-0010.

Your payments are due on August 31, 2016.

Please feel free to contact Ruth McNamara by email at mcnamara.ruth@epa.gov or by phone at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Leonardo Chingcuanco, Assistant Regional Counsel, by email at chingcuanco.leonardo@epa.gov or by phone at (312) 886-7236. Thank you for your assistance in resolving this matter.

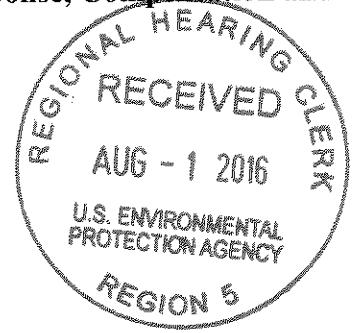
Sincerely,


Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.: CERCLA-05-2016-0010
)	
City of Ortonville)	Proceeding to Assess a Civil Penalty Under
Ortonville, Minnesota)	Section 109(b) of the Comprehensive
Respondent.)	Environmental Response, Compensation and
)	Liability Act
)	
)	
)	
)	
)	
)	



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) 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 Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is the City of Ortonville, a municipality 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 reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal 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 government's response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 per day of violation

for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

12. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. At all times relevant to this CAFO, Respondent was in charge of the facility located at 400 O’Neill Street, Ortonville, Minnesota (facility).

14. Respondent’s facility consists of a building, equipment, structure, storage container, or any site or area where a hazardous substance has been stored, placed, or otherwise come to be located.

15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. 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).

17. Chlorine CAS # 7782-50-5 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On February 11, 2013, at or about 7:30 a.m. Central Time, a release occurred from Respondent’s facility of approximately 67 pounds of chlorine (the release).

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

20. During the release, approximately 67 pounds of chlorine spilled, leaked, emitted, discharged, or escaped into the ambient air.

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

22. Respondent had knowledge of the release on February 11, 2013, at approximately

8:30 a.m. Central Time.

23. Respondent notified the NRC of the release on February 11, 2013, at 12:57 p.m.

Central Time.

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

25. 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).

Civil Penalty

26. Complainant has determined that an appropriate civil penalty to settle this action is \$2,446 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and Respondent's agreement to perform a supplemental environmental project (SEP), and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,446 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's check, payable to "EPA Hazardous Substance Superfund," to:

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

The check must note the following: City of Ortonville, the docket numbers of this CAFO and the billing document number 2751630B010.

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

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

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

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

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

30. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 40 below, 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.

31. Respondent must complete a SEP designed to protect the public health by increasing the air flow at the waste water plant and by enhancing the first responders' emergency response capabilities.

32. Respondent must complete the SEP as follows:

- a. Respondent will purchase and install three fan motors for the waste water plant (\$1,857).
- b. Respondent will purchase and install two fan vent actuator louvers at the waste water plant (\$2,150).
- c. Respondent will purchase and donate the following emergency response equipment to the City of Ortonville Fire Department.
 - i. Scott 4.5 2002 Spec SCBA (\$1,245)
 - ii. Radio Equipment for fire trucks (\$1,818)
 - iii. Four SCI Bottles at \$550 each (\$2,200)

33. Respondent must spend at least \$9,270 to purchase and install the fan motors and vent louvers at the waste water plant and to purchase and donate the emergency response equipment.

34. Respondent certifies as follows:

I certify that the City of Ortonville is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that the City of Ortonville has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that the City of Ortonville 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. I further certify that, to the best of my 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 U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For 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 expired.

35. Respondent must submit a SEP completion report to U.S. EPA by July 31, 2016.

This report must contain the following information:

- a. A detailed description of the SEP as completed;
- b. A description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. A certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. A description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

36. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 28, above.

37. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

38. Following receipt of the SEP completion report described in paragraph 35, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;

- b. There are deficiencies in the SEP as completed or in the SEP report and that U.S EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 40.

39. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 40, below.

40. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$7,416.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 33, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 33, Respondent must pay a penalty of \$1,854.
- d. If Respondent did not submit timely the SEP completion report Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$300	31st day and beyond

41. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

42. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 27-28, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

43. Any public statement that Respondent makes referring to the SEP must include the following language: "The City of Ortonville undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the City of Ortonville for violations of the Comprehensive Environmental Response, Compensation and Liability Act Section 103(a)."

44. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

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

47. Respondent certifies that it is complying with Section 103(a) of CERCLA,

42 U.S.C. § 9603(a),

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

49. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

51. 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.

52. Each party agrees to bear its own costs and attorney's fees in this action.

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

City of Ortonville, Respondent

Date



Char Grossman
City Administrator
City of Ortonville

U.S. Environmental Protection Agency, Complainant

07/26/2016

Date

M. Cecilia Moore

M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

7/26/2016

Date

Douglas Ballotti

Douglas Ballotti, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: City of Ortonville, Ortonville, Minnesota
Docket No. CERCLA-05-2016-0010

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.

7/29/16
Date

Robert A. Kaplan
Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: City of Ortonville, Ortonville, Minnesota
Docket No. CERCLA-05-2016-0010

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on August 1, 2016 in the following manner to the addressees:

Copy by Certified Mail

Return Receipt Requested: David C. McLaughlin
Fluegel, Anderson, McLaughlin & Brutlag
25 NW 2nd Street, Suite 102
Ortonville, Minnesota 56278

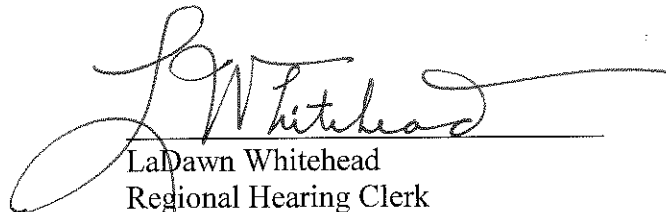
Copy by E-mail to

Attorney for Complainant: Leonardo Chingcuanco
Chingcuanco.leonardo@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: August 1, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7247