



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

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wally Wittaniemi
Operations Supervisor
Grand Haven
1525 Washington Ave.
Grand Haven, Michigan 49417

Re: **Grand Haven-Spring Lake Sewer Authority, Grand Haven, Michigan,**
Consent Agreement and Final Order.
Docket No. **CAA-05-2012-0005**

Dear Mr. Wittaniemi:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on DEC 21 2011. Please pay the civil penalty in the amount of \$5,337.50 in the manner prescribed in paragraphs 27-32 and reference your check with the number BD **2751203A006** and docket number. In addition, please perform the Supplemental Environmental Project in the manner prescribed in paragraphs 33-50.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Thompson, Associate Regional Counsel, at (312) 353-6700. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "M.E. Hans".

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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5
2011 DEC 21 PM 1:00

In the Matter of:)
)
Grand Haven-Spring Lake)
Sewer Authority)
)
Grand Haven, Michigan,)
)
Respondent.)
_____)

Docket No. CAA-05-2012-0005

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

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Consent Agreement and Final Order

REGIONAL HEARING CLERK
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PROTECTION AGENCY

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is the Grand Haven-Spring Lake Sewer Authority, a public corporation doing business in Michigan.

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with 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 the 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. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements.

10. On June 20, 1996, the U.S. EPA promulgated a final rule known as the Risk Management Program (RMP), 40 C.F.R. Part 68, which implements Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). These regulations require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process to develop and implement an RMP that must be submitted to the U.S. EPA.

11. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an 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.

12. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

13. "Stationary source" shall mean 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.

14. "Threshold quantity" shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended, 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.

15. "Regulated substance" shall mean any substance listed pursuant to section 112(r)(3) of the Act as amended. 40 C.F.R. § 68.3.

16. "Process" shall mean 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. 40 C.F.R. § 68.3.

17. Complainant has authority under Section 113 of the Act to pursue civil penalties for violations of the Section 112(r)(7) regulations found at 40 C.F.R. Part 68.

18. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997, through March 15, 2004; may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004; and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000, for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Section 113(d)(1) limits the Administrator's authority to matters where the first

alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

21. Respondent is a Michigan public corporation. The Respondent's facility is located at 1525 Washington Avenue, Grand Haven, Michigan.

22. The Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

23. At all times relevant to this CAFO, Respondent operated a municipal waste water treatment system, located at 1525 Washington Avenue, Grand Haven Michigan 49417 (the "Facility").

24. On or about July 8, 2008, representatives of U.S. EPA conducted a Risk Management Program inspection of the Facility.

25. During the inspection, U.S. EPA found that Respondent had more than the threshold quantity of 2,500 pounds (lbs.) of chlorine and 5,000 lbs. of sulfur dioxide at the facility.

26. Complainant noted in its inspection report that Respondent failed to:
- a. certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary, as required under 40 C.F.R. § 68.69(c);
 - b. provide refresher training at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee

understands and adheres to the current operating procedures of the process, as required under 40 C.F.R. § 68.71(b);

- c. ascertain and document in record that each employee involved in operating a process has received and understood the training required, as required under 40 C.F.R. § 68.71(c);
- d. establish and implement written procedures to maintain the on-going integrity of process equipment listed in 40 C.F.R. § 68.73(a), as required under 40 C.F.R. § 68.73(b);
- e. ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as required under 40 C.F.R. §68.73(d)(3);
- f. document each inspection and test that has been performed on process equipment, as required under 40 C.F.R. § 68.73(d)(4); and
- g. certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed, as required under 40 C.F.R. § 68.79(a).

Civil Penalty

27. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, prompt return to compliance by the Respondent and an agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$5,337.50.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,337.50 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

The check must note the case name, docket number of this CAFO, and the billing document number.

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

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Monika Chrzaszcz, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert Thompson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

31. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraphs 32 and 45, 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable

in a collection action.

32. 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 overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

33. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by helping to prevent/reduce the risk of a leak of chlorine and sulfur dioxide to the environment.

34. At its Grand Haven-Springs Lake Wastewater Treatment Plant, Respondent must complete the SEP as follows. Within six months from the effective date of this CAFO, Respondent will begin the installation of electric valve closure systems for both the chlorine and sulfur dioxide feed systems, which are used in the treatment of wastewater. Two electric actuators will be purchased for the chlorine system and two electric actuators will be purchased for the sulfur dioxide system. A control panel will also be purchased for the chlorine and sulfur dioxide feed systems. Automatic shutoff will be accomplished under two conditions: (1) a remote emergency "stop" button will be located near each location (chlorine and sulfur dioxide) for operator use; and (2) the automatic shutoff system will be tied to chlorine and sulfur dioxide sensors that will be activated through the SCADA system when levels rise above preset limits.

Installation will be completed within nine months of the effective date of this CAFO.

35. Respondent must spend at least \$23,917 to purchase and install the equipment.

36. Respondent must continuously use or operate the equipment installed as the SEP for at least five year(s) following its installation, unless Respondent ceases to operate its chlorine or sulfur dioxide systems.

37. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

38. Respondent certifies to the following statement:

I am 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 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.

39. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

40. Respondent must submit a SEP completion report to U.S. EPA within 90 days of the completion of the installation. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. 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 cancelled checks that specifically

identify and itemize the individual cost of the goods and services;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP.

41. Respondent must submit all notices and reports required by this CAFO by first class

mail to:

Monika Chrzaszcz, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

42. In the report that Respondent submits as provided by this CAFO, Respondent 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.

43. Following receipt of the SEP completion report described in paragraph 40, 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 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 45.

44. 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 requirement 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 45, below.

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

- a. If Respondent spent less on the SEP than the amount set forth in paragraph 35, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 35.
- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph 45.a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$15,000 in addition to any penalty required under subparagraph 45.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 34 above for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 40 above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	15 th through 30 th day
\$500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

46. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

47. 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 28 and 29, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts as specified in paragraph 31.

48. Any public statement that Respondent makes referring to the SEP must include the following language, "The Grand Haven-Spring Lake Sewer Authority undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the Grand Haven-Spring Lake Sewer Authority for alleged violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r)."

49. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

50. 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

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

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

53. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 51 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

54. Respondent certifies that it is complying fully with Section 112(r) of the Act, 42 U.S.C. § 7412(r).

55. This CAFO constitutes an "enforcement response" as that term is used in U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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

57. 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.

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

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

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CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Grand Haven-Spring Lake Sewer Authority, Grand Haven, Michigan

Docket No. CAA-05-2012-0005

Grand Haven-Spring Lake Sewer Authority, Grand Haven, Michigan, Respondent

11-28-11
Date

Wally Wittaniemi
Wally Wittaniemi
Operations Supervisor

United States Environmental Protection Agency, Complainant

12-15-11
Date

Richard Karl
Richard Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

**Grand Haven-Spring Lake Sewer Authority, Grand Haven, Michigan
Docket No. CAA-05-2012-0005**


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PROTECTION AGENCY

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.

12-16-11
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:


Wally Wittaniemi
Operations Supervisor
Grand Haven
1525 Washington Ave.
Grand Haven, Michigan 49417

Matthew C. VanHoef
Scholten Fant
100 North Third Street
P.O. Box 454
Grand Haven, Michigan 49417-0454

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 21ST date of December, 2011.

CAA-05-2012-0005



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

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