

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

<b>In the Matter of:</b>	:
	:
City of Radford	: <b>U.S. EPA Docket No. CERCLA-03-2020-0096</b>
10 Robertson Street	:
Radford, Virginia 24141,	: <b>Proceeding under Sections 103 and 109</b>
	: <b>of the Comprehensive Environmental</b>
Respondent.	: <b>Response, Compensation and Liability Act,</b>
	: <b>42 U.S.C. §§ 9603 and 9609</b>
City of Radford Water Treatment Plant	:
20 Forest Avenue	:
Radford, Virginia 24141,	:
	:
Facility.	:
<hr style="width: 25%; margin-left: 0;"/>	:

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and the City of Radford (“Respondent”) (collectively the “Parties”), pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 109 of CERCLA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under CERCLA for the violation alleged herein.
  
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(7).

### **GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations or the findings of law set forth in this Consent Agreement and Final Order.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. EPA and Respondent shall each bear its own costs and attorney's fees in connection with this proceeding.

### **FINDINGS OF FACT AND EPA'S CONCLUSIONS OF LAW**

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Respondent is a municipality in the Commonwealth of Virginia, with its principal place of business located at 10 Robertson Street in Radford, Virginia.
13. As a municipality, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and is subject to the assessment of civil penalties for the violation alleged herein.

14. At all times relevant to this Consent Agreement and Final Order, Respondent has been the owner and operator of a water treatment plant located at 20 Forest Avenue, Radford, Virginia (“Facility”), within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
15. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and 40 C.F.R. § 302.3.
16. Respondent is an “owner or operator” of the Facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).
17. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.
18. According to information provided by Radford to EPA, a release of chlorine gas, Chemical Abstracts Service (“CAS”) Registry No. 7782-50-5, occurred at the Facility on October 19, 2017 at approximately 11:40 am (the “Release”) due to a rupture of tubing connected to a chlorine tank in the chlorine room.
19. On December 12, 2018, EPA representatives conducted an inspection of the Facility following the Release to determine Respondent’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302, 303, 304, 311, and 312 of EPCRA, 42 U.S.C. §§ 11002, 11003, 11004, 11021, and 11022 (“the Inspection”).
20. On December 31, 2019, EPA issued to Respondent a Request to Show Cause and Opportunity to Confer with EPA regarding alleged violation of CERCLA Section 103 at the Facility (the “Show Cause Letter”).
21. On January 22, 2020, EPA received Respondent’s reply to EPA’s Show Cause Letter via email.

**Count I**  
**Failure to Immediately Notify the NRC of a Release**

22. The allegations of Paragraphs 1 through 21 of this Consent Agreement are incorporated herein by reference.

23. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as they have knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.
24. The chemical chlorine is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 10 pounds, as listed in 40 C.F.R. § 302.4.
25. According to information provided by Respondent, Respondent first became aware that the Release was occurring at approximately 11:40 a.m. on October 19, 2017 when an alarm inside the Facility’s chlorine room sounded. Facility employees responding to the alarm noticed a strong chlorine odor outside the chlorine room.
26. According to information provided by Respondent, a Facility employee called 911 to report the Release at approximately 11:55 am on October 19, 2017.
27. According to information provided by Respondent, firefighters responding to the Facility’s 911 call arrived at the Facility at approximately 12:08 pm on October 19, 2017. Sometime after their arrival, firefighters turned off the flow of chlorine to stop the Release. At approximately 2:10 pm, firefighters determined that Facility employees could safely re-enter the chlorine room.
28. According to information provided by Respondent, at the conclusion of the Release, the weight of the chlorine tank from which the Release occurred was approximately 152 pounds lighter than the weight of the tank prior to the Release, which indicates that 152 pounds of chlorine were released during the Release. Respondent knew or should have known that the Release from the Facility was in a quantity equal to or exceeding its RQ.
29. The Release from the Facility on October 19, 2017 constituted a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
30. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).
31. Respondent notified the NRC of the Release at approximately 11:46 a.m. on October 20, 2017, approximately 24 hours after the Release began. .
32. Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the relevant regulations at 40 C.F.R. Part 302 by failing to immediately notify the NRC as soon as it knew or should have known of the release of a hazardous substance from the Facility in a quantity equal to or greater than the RQ.

33. In failing to comply with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302, Respondent is subject to the assessment of penalties under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a).

### **CIVIL PENALTY**

34. In settlement of EPA's claims for civil penalties for the violation alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **TWENTY-ONE THOUSAND FOUR HUNDRED AND SIXTY-SIX DOLLARS (\$21,466)** for the alleged violation of Section 103 of CERCLA, 42 U.S.C. § 9603, which Respondent shall be liable to pay in accordance with the terms set forth below.
35. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), including, the following: the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to 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 (September 30, 1999)*, which reflects the statutory penalty criteria and factors set forth in Section 109(a)(3) of CERCLA, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
36. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CERCLA-03-2020-0096;
  - b. All checks in payment of the civil penalty shall be made payable to the "EPA-Hazardous Substances Superfund";
  - c. All payments made by check in payment of the civil penalty and sent by regular mail shall be addressed and mailed to:  
  

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000
  - d. For additional information concerning other acceptable methods of payment of the civil penalty amounts see:

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

- e. A copy of Respondent's checks or other documentation of payment of the penalties using the method selected by Respondent for payment shall be sent simultaneously to:

Mark Bolender  
Senior Assistant Regional Counsel  
U.S. EPA, Region III (3RC20)  
1650 Arch Street  
Philadelphia, PA 19103  
[bolender.mark@epa.gov](mailto:bolender.mark@epa.gov)

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
38. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
39. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
40. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

41. Failure by the Respondent to pay the civil penalty assessed by the Final Order in accordance with the terms of this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
42. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

### **GENERAL SETTLEMENT CONDITIONS**

43. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
44. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

### **CERTIFICATION OF COMPLIANCE**

45. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violation alleged in this Consent Agreement.

### **OTHER APPLICABLE LAWS**

46. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of CERCLA, or any regulations promulgated thereunder.

### **RESERVATION OF RIGHTS**

47. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under CERCLA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

### **EXECUTION /PARTIES BOUND**

48. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that they are fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

### **EFFECTIVE DATE**

49. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

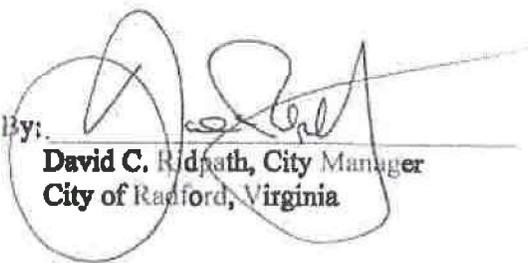
### **ENTIRE AGREEMENT**

50. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

**For Respondent;**

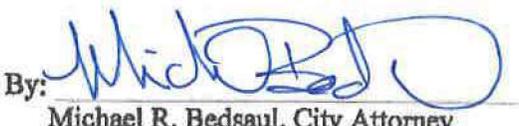
**City of Radford**

Date: 4-22-2020

By:   
**David C. Ridpath, City Manager**  
**City of Radford, Virginia**

**Approved as to Form:**

Date: 4/22/2020

By:   
**Michael R. Bedsaul, City Attorney**  
**City of Radford, Virginia**

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: May 4, 2020

By: **KAREN MELVIN**  Digitally signed by  
KAREN MELVIN  
Date: 2020.05.04  
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Karen Melvin  
Director, Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: 5/1/2020

By: **MARK BOLENDER**  Digitally signed by MARK  
BOLENDER  
Date: 2020.05.01  
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Mark Bolender  
Sr. Assistant Regional Counsel  
U.S. EPA – Region III



injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of CERCLA and the regulations promulgated thereunder.

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

**JOSEPH  
LISA**

Digitally signed by  
JOSEPH LISA  
Date: 2020.05.04  
12:09:17 -04'00'

\_\_\_\_\_  
Date

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

**In the Matter of:**

City of Radford  
10 Robertson Street  
Radford, VA 24141,

Respondent,

City of Radford Water Treatment Plant  
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Virginia 24141,

Facility.

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: **U.S. EPA Docket No. CERCLA-03-2020-0096**  
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: **Proceeding under Sections 103 and 109**  
: **of the Comprehensive Environmental**  
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: **42 U.S.C. §§ 9603 and 9609**  
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**CERTIFICATE OF SERVICE**

I certify that on May 4, 2020, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **email**, to:

Michael Bedsaul, Esq.  
Sands Anderson PC  
150 Peppers Ferry Rd, NE  
P.O. Box 2009  
Christiansburg, VA 24068-2009

Copy served via **email** to:

Mark Bolender  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

Dated: May 4, 2020

**BEVIN**  
**ESPOSITO**  
Digitally signed by  
BEVIN ESPOSITO  
Date: 2020.05.04  
14:26:11 -04'00'

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III