



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 20 2012

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Mark T. Mahlberg
Mahlberg, Brandt, Gilbert, & Thompson
The Lawyers Building
715 Court Street
Saginaw, Michigan 48602

Re: Saginaw Charter Township Wastewater Treatment Plant, Saginaw, Michigan
Consent Agreement and Final Order.
Docket No. CAA-05-2012-0045

Dear Mr. Mahlberg:

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 August 20, 2012. Please inform your client of their obligation to pay a civil penalty in the amount of \$8,500 in the manner prescribed in paragraphs 38-43 and please note that your client must reference their check with the number BD 2751203A046 and docket number. In addition, please perform the Supplemental Environmental Project (SEP) in the manner prescribed in paragraphs 44-60.

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 Louise Gross, Regional Counsel, at (312) 886-6844. Thank you for your assistance in resolving this matter.

Sincerely yours,

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

Enclosure

cc. Louise Gross, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Saginaw Charter Township
Saginaw, Michigan 48638

EPA ID: 10000146898

Respondent.

) Docket No. CAA-05-2012-0045
)

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

RECEIVED
AUG 20 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order

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, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and its implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is the Saginaw Charter Township, a municipality in the State of 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. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), on June 20, 1996, U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Chemical Accident Prevention Program (CAPP) regulations, are codified at 40 C.F.R. Part 68.

10. As provided at 40 C.F.R. § 68.10(a), the CAPP regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130. Procedures to determine whether a threshold quantity of a regulated substance is present in a process at a stationary source are codified at 40 C.F.R. § 68.115.

11. As defined at 40 C.F.R. § 68.3, "process" means any activity involving a regulated substance including any use, storage, manufacturing, handling, 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 regulated substances could be involved in a potential release, shall be considered a single process.

12. As defined at 40 C.F.R. § 68.3, “stationary source” means 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, and from which an accidental release may occur.

13. According to 40 C.F.R. § 68.12(a), the owner or operator of a stationary source subject to the requirements of 40 C.F.R. Part 68 must submit a single Risk Management Plan (RMP), as provided in 40 C.F.R. §§ 68.150 to 68.185.

14. Under 40 C.F.R. §§ 68.10(a) and 68.150, the owner or operator of a stationary source subject to the requirements of 40 C.F.R. Part 68 must submit the RMP no later than the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process.

15. Under 40 C.F.R. § 68.10, covered processes are subjected to one of three sets of program requirements: Program 1 eligibility requirements; Program 2 eligibility requirements; or Program 3 eligibility requirements.

16. Under 40 C.F.R. § 68.10(d), Program 3 applies to a process that (1) does not meet the requirements of Program 1 eligibility, as set forth at 40 C.F.R. § 68.10(b), and (2) is subject to the OSHA Process Safety Management (PSM) standard set forth at 29 C.F.R. § 1910.119.

17. Under 40 C.F.R. § 68.10(b), Program 1 applies to a process that meets all the following requirements: (1) for the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, over-pressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to off-site death, injury, or response or restoration activities for an exposure of an environmental receptor; (2) the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. § 68.25 is less than the distance to any public receptor; and (3) emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

18. The OSHA PSM standard applies to a process which involves a chemical at or above the threshold quantities listed in Appendix A of 29 C.F.R. § 1910.119.

19. The general requirements at 40 C.F.R. § 68.12(d)(2) require that the owner or operator of a stationary source with a process subject to Program 3 requirements conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 through 68.95.

20. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA (Administrator) may assess a civil penalty of up to \$27,500 per day of violation of the Act, up to a total of \$220,000, for violations that occurred on or after 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,

through January 12, 2009; 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.

21. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. 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 complaint.

Factual Allegations and Alleged Violations

23. Respondent is a Michigan municipality. The Respondent's wastewater treatment facility is located at 5790 West Michigan, Saginaw, Michigan 48638.

24. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. At all times relevant to this CAFO, the Respondent's Department of Public Services has operated the municipal wastewater treatment facility.

26. The facility is a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

27. Respondent is the "owner or operator" of the facility, as defined at Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9).

28. Respondent's use and storage of anhydrous ammonia is a "process," as defined at 40 C.F.R. § 68.3.

29. Anhydrous ammonia is listed as a regulated toxic substance in Tables 1 and 2 of 40 C.F.R. § 68.130.

30. Anhydrous ammonia is a "regulated substance," as that term is defined in Section 112(r)(2) of the Act, 42 U.S.C. § 7412(r)(2) and 40 C.F.R. § 68.3.

31. The "threshold quantity" (as that term is defined in 40 C.F.R. § 68.3) for anhydrous ammonia is 10,000 pounds, as listed in 40 C.F.R. § 68.130, Tables 1 and 2.

32. At all times relevant to this CAFO, Respondent had present at its facility an amount of anhydrous ammonia greater than 10,000 pounds.

33. The distance from the facility to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. § 68.25 is greater than the distance to any public receptor.

34. Respondent's process is subject to the OSHA PSM standard set forth at 29 C.F.R. § 1910.119.

35. On June 24, 1999, Respondent submitted an initial RMP for the process, which indicated the process is subject to the Program 3 eligibility requirements.

36. On July 15, 2009, an authorized representative of U.S. EPA conducted a compliance inspection at the facility to determine Respondent's compliance with the Risk Management Program regulations.

37. Based on the inspection, U.S. EPA alleges that Respondent has committed the following violations:

a. The owner or operator failed to document other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document, in violation of 40 C.F.R. § 68.15(c).

- b. The owner or operators failed to estimate population that would be included in the distance to the endpoint in the RMP based on a circle with the point of release at the center, in violation of 40 C.F.R. § 68.30 (a).
- c. The owner or operator failed to use the most recent Census data, or other updated information to estimate the population, in violation of 40 C.F.R. § 68.30(c).
- d. The owner or operator failed to identify environmental receptors that would be included in the distance to the endpoint based on a circle with the point of release at the center, in violation of 40 C.F.R. § 68.33(a).
- e. The owner or operator failed to rely on information provided on local U.S.G.S. maps, or on any data source containing U.S.G.S. data to identify environmental receptors, in violation of 40 C.F.R. § 68.33(b).
- f. The owner or operator failed to review and update the off-site consequence analyses at least once every five years, in violation of 40 C.F.R. § 68.36(a).
- g. The owner or operator failed to maintain data used to estimate population and environmental receptors potentially affected, in violation of 40 C.F.R § 68.39(e).
- h. The owner or operator failed to establish a system to promptly address the team's findings and recommendation from their Process Hazard Analysis (PHA) conducted; assure that recommendations are resolved in a timely manner and documented; document what actions are to be taken; 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, in violation of 40 C.F.R. § 68.67(e).

i. The owner or operator failed to update and revalidate their PHA by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process, in violation of 40 C.F.R. § 68.67(f).

j. The owner or operator failed to retain PHAs and updates or revalidations for each process covered, as well as the resolution of recommendations for the life of the process, in violation of 40 C.F.R. § 68.67(g).

k. The owner or operator failed to certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary, in violation of 40 C.F.R. § 68.69(c).

l. The owner or operator failed to certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to certify that the developed procedures and practices are adequate and being followed, in violation of 40 C.F.R. § 68.79(a).

m. The owner or operator failed to submit a single registration form that included the correct maximum quantity of each regulated substance in a process (in pounds), in violation of 40 C.F.R. § 68.160(b)(7).

Civil Penalty

38. 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, Respondent's agreement to perform a supplemental environmental project and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$8,500.00.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,500.00 civil penalty by sending a cashier's or certified check by regular U.S. Postal Service

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.

40. 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

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

41. This civil penalty is not deductible for federal tax purposes.
42. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 55, 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.

43. 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

44. Respondent must complete a supplemental environmental project (SEP) at its wastewater treatment facility designed to protect the environment and public health by reducing the amount of chlorine on site to no more than 2,500 pounds. *See* 40 C.F.R. § 68.130.

45. At its wastewater treatment facility, Respondent must complete the SEP by retrofitting the existing pre-treatment chlorine system with a new sodium hypochlorite system (the system) no later September 30, 2012.

46. Respondent must spend at least \$30,851.00 to design, purchase and install the system.

47. Respondent must continuously use or operate the system for at least five years following its installation.

48. Respondent certifies that it is not required to perform or develop this 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.

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

50. 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.

51. 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

52. In the 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.

53. Following receipt of the SEP completion report described in paragraph 50, 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 55.

54. 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 55, below.

55. 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 46, 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 46.
- 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 38 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 38 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 45 above for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 50 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.

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

57. 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 paragraph 39 above and will pay interest, handling charges, and nonpayment penalties on any overdue amounts as specified in paragraph 43.

58. Any public statement that Respondent makes referring to the SEP must include the following language, "The Saginaw Charter Township Wastewater Treatment Plant undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the Saginaw Charter Township for violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r)."

59. 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.

60. 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

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

62. 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.

63. 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 61, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

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

65. 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).

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

67. 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.

68. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

CONSENT AGREEMENT AND FINAL ORDER

**In the Matter of: Saginaw Charter Township Wastewater Treatment Plant,
Saginaw, Michigan**

Docket No.

Saginaw Charter Township, Respondent

7-24-12
Date

Rob Grose
Name: Rob Grose
Title: Manager

United States Environmental Protection Agency, Complainant

8/14/2012
Date

Richard Karl
Richard Karl, Director
Superfund Division

CONSENT AGREEMENT AND FINAL ORDER

**In the Matter of: Saginaw Charter Township Wastewater Treatment Plant,
Saginaw, Michigan**

Docket No. CAA-05-2012-0045

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.

8-16-12

Date



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

RECEIVED
AUG 20 2012

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**