



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

AUG 21 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald P. Dewitte
Mayor
City of St. Charles
2 E. Main Street
St. Charles, Illinois 60174

Re: **Saint Charles Wastewater Treatment Facility, St. Charles, Illinois**
Consent Agreement and Final Order
Docket No. CAA-05-2008-0003

Dear Mr. Dewitte:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on August 21, 2008. Please pay the civil penalty in the amount of \$20,124 in the manner prescribed in paragraph(s) 11-16 and reference your check with the number BD 2750803A030 and docket number CAA-05-2008-0003.

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 Richard Wagner, Associate Regional Counsel, at (312) 8867947. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Mark J. Horwitz".

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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_____)	
In the Matter of:)	
)	Proceeding to Assess a
Saint Charles Wastewater)	Civil Penalty under
Treatment Facility)	Section 113(d) of the
1404 S. Seventh Ave.)	Clean Air Act,
St. Charles, Illinois 60174)	42 U.S.C. § 7413(d)
)	
Respondent)	
_____)	Docket No. CAA-05-2008-0003

CONSENT AGREEMENT AND FINAL ORDER

I. BACKGROUND

1. Complainant, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, on delegated authority of the U.S. EPA Administrator, brought this action under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), proposing that a civil penalty be assessed against Respondent for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and regulations promulgated thereunder by the Administrator, codified at 40 C.F.R. Part 68.

2. In the Second Amended Administrative Complaint ("Complaint"), filed in this matter on April 11, 2008, Complainant proposed that a \$46,000 penalty be assessed against Respondent for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), it is alleged to have committed, as follows:

Count I -- Failure of facility to review and update its Plan every 5 years. 40 C.F.R. § 68.190.

- Count II -- Failure of facility to update every 5 years the “offsite consequence analyses” in its Plan. 40 C.F.R. § 68.36.
- Count III -- Failure of facility to maintain records documenting the preparation of its Plan’s “offsite consequence analyses.” 40 C.F.R. § 68.39(a).
- Count IV -- Failure of facility to document lines of authority regarding those responsible for the elements of the Plan. 40 C.F.R. § 68.15(c).
- Count V -- Failure of facility to maintain certain up-to-date safety information related to its regulated substances, processes, and equipment. 40 C.F.R. § 68.48(a).
- Count VI -- Failure of facility to conduct and document review of hazards associated with its regulated substance, processes, and procedures. 40 C.F.R. § 68.50(c).
- Count VII -- Failure of facility to prepare and maintain complete written operating procedures relating to normal operations and shutdowns; temporary operations; and emergency shutdowns. 40 C.F.R. § 68.52(a).
- Count VIII -- Failure of facility to certify a compliance audit. 40 C.F.R. § 68.58.
- Count IX -- Failure of facility to de-register, informing U.S. EPA that it is no longer covered by regulation under Section 112(r) of the CAA. 40 C.F.R. § 68.190(c).

3. On May 6, 2008, Respondent filed Respondent’s Answer to Second Amended Administrative Complaint, requesting a hearing.

II. AGREED TERMS

4. Respondent admits the jurisdictional allegations in the Complaint.
5. Respondent neither admits nor denies the factual allegations and conclusions of law set forth in the Complaint and Paragraph 2 of this CAFO.

6. Respondent was de-registered by the Administrator's Risk Management Plan Reporting Center on April 29, 2008, and, consequently, Respondent is no longer regulated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

7. Respondent consents to the issuance of this CAFO, and commits itself to the payment of a civil penalty and completion of a Supplemental Environmental Project (SEP), as set forth in this CAFO.

8. Complainant agrees to accept Respondent's full compliance with the terms of this CAFO as a complete resolution of the violations alleged in the Complaint.

9. Respondent waives its right to a hearing on any issue of law or fact set forth in the Complaint or in this Consent Agreement, and waives its right to appeal the Final Order accompanying this Consent Agreement.

III. CIVIL PENALTIES and FEES

10. In consideration of Respondent's agreement to perform a SEP, and certain litigation risks, U.S. EPA agreed to mitigate the penalty of \$46,000 to \$20,124.

11. Respondent must pay the \$20,124 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

12. Respondent must send the check to:

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

13. A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check.

Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604

Monika Chrzaszcz
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (SC-6J)
Chicago, Illinois 60604

14. Respondent shall not deduct this civil penalty for federal tax purposes.

15. If Respondent does not timely pay civil penalties as required by this CAFO, U.S. EPA may bring an action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. §7413(d)(5), 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 parties agree that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action in this matter.

16. Interest will accrue on any amount of penalty overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a penalty at the rate of at least six percent per year on any

principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

17. Respondent agrees to complete a SEP designed to protect public health and the environment in compliance with the following Paragraphs.

18. Respondent agrees to purchase the following emergency response equipment for the St. Charles Fire Department:

○ Chlorine Institute Recovery Vessel	\$4,520.00
○ Portable Weather Station (Pegasus Fly Away)	\$4,500.00
○ Photo Ionization Detector (PID)	\$3,500.00
○ Laptop Computer (Panasonic Toughbook)	\$3,500.00
○ MSA Altair Chlorine Detector	\$500.00
○ Accuro Drager Pump	\$1,300.00
○ Drager Tubes (2 sets)	\$150.00

Further, Respondent represents that the cost to perform the SEP will be at least \$17,970.00.

19. 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 in negotiation to receive, credit for the SEP in any other enforcement action.

20. Respondent must prepare a SEP Completion Report. The SEP Completion 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 canceled checks that specifically identify and itemize the individual costs 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 (quantify the benefits and pollution reductions, if feasible).

21. Respondent must submit the SEP Completion Report to:

Attn: Monika Chrzaszcz (SC-6J)
Chemical Emergency Preparedness and Prevention Section
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

The SEP Completion Report should be submitted no later than 60 days from the date this CAFO is filed.

22. In its submittal under paragraph 21, Respondent must certify that the SEP Completion 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, the information 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.

23. Following receipt of the SEP Completion Report, Complainant Enforcement Staff will notify Respondent in writing of one of the following:

- 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. Respondent has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under Paragraph 26.

24. If U.S. EPA does not provide notice to Respondent under the provisions of Paragraph 23, above, within 45 days from receipt of the SEP Completion Report, it shall be deemed that the SEP Completion Report will be accepted under option a., Paragraph 23.

25. Should the SEP or SEP Completion Report be deficient in option b. under Paragraph 23, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. Any objection should be submitted to the addressee identified in Paragraph 21. On receipt of any objections, from Respondent, the parties will have 30 days to reach an agreement. If the parties cannot reach an agreement, Complainant's Enforcement Staff will give Respondent a written decision on its objection. Respondent shall comply with all requirements in that 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 26 below.

26. If Respondent fails to complete the SEP identified at Paragraph 18 within 120 days of the filing of this CAFO, the full amount of proposed penalty, that being \$46,000, shall become immediately due and owing, minus any amount of penalty already paid by Respondent.

27. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 112(r) of the Act, 40 C.F.R. Part 68."

28. 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 U.S. EPA finds that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, it will allow Respondent an extension of time no longer than the period of delay, or anticipated delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a 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.

29. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

V. GENERAL TERMS of SETTLEMENT

30. Compliance with the terms of this CAFO shall constitute full settlement of this proceeding with respect to all civil and administrative claims alleged in the Complaint.

31. If Respondent fails to meet any requirement of this CAFO, the full amount of proposed penalty, that being \$46,000, shall become immediately due and owing, minus any

amount of penalty already paid by Respondent.

32. Nothing in this CAFO shall relieve Respondent from complying with any provision of the Act or any other applicable federal, State, or local environmental law or regulation.

33. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the CAA and other applicable laws and regulations.

34. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the regulations cited above, and to assess a civil penalty in an amount greater than assessed in this CAFO.

35. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAFO shall be null and void.

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

37. Respondent and Complainant agree to bear their own respective costs and attorneys' fees.

38. The terms of this CAFO bind Respondent, its successors, and assigns. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the facility.

Consent Agreement and Final Order
City of St. Charles Wastewater Treatment Facility
Docket No. CAA-05-2008-0003 *pp.*

FINAL ORDER

The foregoing Consent Agreement, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 8/20/08

Lynn Buhl

Lynn Buhl,
Regional Administrator
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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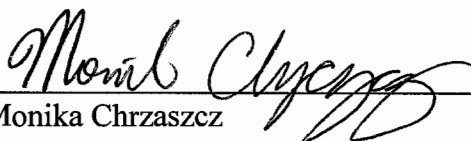
Certificate of Service

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:

Mark Koenen
City of St. Charles Wastewater Treatment Facility
1404 S. Seventh Ave.
St. Charles, Illinois 60174

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 21 date of August, 2008.



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

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