

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK


IN THE MATTER OF)
)
U.S. Water Company)
Lexington, Missouri)
)
)
Respondent)
_____)

Docket Nos. CAA-07-2006-0319
EPCRA-07-2005-0319

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 5 of the Consent Agreement and Final Order is authorized in this proceeding. Counsel for Complainant shall file the original page 5 , which shall replace the facsimile of page 5, within one day of receipt of that document from Respondent.

Dated: 8/28/06


William W. Rice
Acting Regional Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
)
) Docket Nos.
) EPCRA-07-2005-0319
) CAA-07-2006-0319
U.S. Water Company)
Lexington, Missouri)
)
Respondent.)
)
)

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of civil penalties was initiated on or about August 4, 2005 pursuant to Section 325 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045, when the United States Environmental Protection Agency (Complainant or EPA) issued to the U.S. Water Company, Lexington, Missouri, (Respondent) a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with violations of Section 312 of EPCRA, 42 U.S.C. § 11022 and the regulations promulgated thereunder and codified at 40 C.F.R. Part 370, governing the submission of emergency and hazardous chemical inventory forms by owners and operators of covered facilities.

The Complaint proposed a penalty of Thirty-two Thousand Nine Hundred Forty-Eight Dollars (\$32,948) for these violations. The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations in the Complaint.

As part of settlement, the Complaint was amended on August 23, 2006. The Complaint was amended to include two violations of Section 112(r)(7) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r)(7).

This Consent Agreement and Final Order is a result of the above negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Amended Complaint.

CONSENT AGREEMENT

1. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Amended Complaint. Respondent maintains that it acted in good faith and has made considerable capital improvements to the facility in endeavoring to comply with all applicable regulations.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in the Amended Complaint without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

6. This Consent Agreement and Final Order resolves all civil and administrative claims for the EPCRA and CAA violations specifically alleged in the Amended Complaint; except, however, if any of the representations made by Respondent herein are found to be untrue, all or any part of this agreement may be deemed voidable at the discretion of the Complainant. To the best of EPA's knowledge, there are no other pending violations of EPCRA and the CAA, except for violations of Section 112(r)(1) of the CAA for which an Administrative Compliance Order on Consent will be issued as described in paragraph 10 below. Complainant reserves the right to take any enforcement action with respect to any other violations not specifically alleged in the Amended Complaint.

7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

9. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance at the U.S. Water Company's Lexington Facility with the requirements of Section 312 of EPCRA, 42 U.S.C. §§ 11022 and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

10. Respondent consents to payment of a civil penalty of \$16,500 as set forth in paragraph 1 of the Final Order and consents to the issuance of an Administrative Compliance Order on Consent requiring the construction of a new chlorine room at U.S. Water's Lexington facility.

11. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due shall cause the entire civil penalty assessed to be immediately due and owing, and may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate, together with any late charges and or handling charges which may be authorized by statute.

FINAL ORDER

Pursuant to the authority of Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(c) of EPCRA, 42 U.S.C. § 11002(c), and according to terms of the Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Sixteen Thousand Five Hundred Dollars (\$16,500), together with interest thereon at the rate of 2% per annum. Payments shall be made as follows:

a. \$5,508.81 (principal) and \$28.03 (interest), for a total payment of \$5,536.84, within 30 days of the effective date of the Final Order;

b. \$5,481.88 (principal) and \$54.96 (interest), for a total payment of \$5536.84, within 120 days of the effective date of the Final Order; and

c. \$5,509.31 (principal) and \$27.53 (interest), for a total payment of \$5,536.84, within 210 days of the effective date of the Final Order.

Payment of the entire penalty, without interest, may be paid within 30 days of the effective date of the Final Order. Payment of the entire penalty plus accrued interest may be made at any time after 30 days of the effective date of the Final Order.

2. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest.

3. Each payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency Region VII
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

Each payment shall identify the Respondent by name and docket number (EPCRA-07-2006-0319 and CAA-07-2006-0319). Copies of the check shall be mailed to:

Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

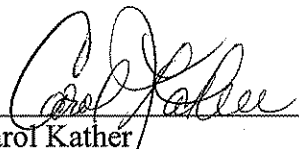
5. This Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

6. Respondent and Complainant shall bear their respective costs and attorney's fees.

COMPLAINANT:

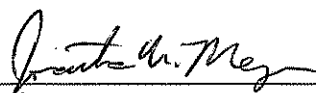
United States Environmental Protection Agency

Date 8/28/06



Carol Kather
Acting Director
Air, RCRA, and Toxics Division

Date 8/28/06



Jonathan W. Meyer
Assistant Regional Counsel
Office of Regional Counsel


RESPONDENT:
U.S. Water Company

8-28-06
Date

Steven J. Achler
Name:
Title: *President*

IT IS SO ORDERED. This Order shall become effective immediately.

8/28/06
Date



William W. Rice
Acting Regional Administrator

IN THE MATTER OF U.S. Water Company, Respondent
Docket Nos. CAA-07-2006-0319; EPCRA-07-2005-0319

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jonathan W. Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Steven J. Schleicher
Registered Agent for U.S. Water Company
8901 State Line Road, Ste 250
Kansas City, MO 64114


Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable Carl C. Charneski
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 8/28/06


Kathy Robinson
Hearing Clerk, Region 7