



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 03 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ronald Herd
General Manager
Corbin Utilities Commission
1515 Cumberland Falls Highway
Corbin, Kentucky 40702

Re: Corbin Utilities Commission
Consent Agreement and Final Order
CAA-04-2016-8019(b)

Dear Mr. Herd:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2016-8019(b)) involving Corbin Utilities Commission. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Corbin Utilities Commission on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Deanne Grant at (404) 562-9291.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
Corbin Utilities Commission)
)
Respondent.)
_____)

Docket No.
CAA-04-2016-8019(b)

2017 JAN -3 AM 7:33
HEARING CLERK
USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing 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 United States Environmental Protection Agency, Region 4 (the "EPA"). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is Corbin Utilities Commission, a municipality doing business in the Commonwealth of Kentucky. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. On October 27, 2015, the EPA issued to Respondent a notice of potential violation (“NOPV”), providing notice that the EPA found that Respondent had potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On April 5, 2016, and May 26, 2016, representatives of Respondent and the EPA discussed the October 27, 2015, NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

11. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

12. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

D. FACTUAL ALLEGATIONS

13. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 60 Hinkle Street, Corbin, Kentucky 40701 (stationary source).

14. Respondent has submitted and registered an RMPlan to the EPA for its stationary source and has developed an RMProgram accidental release prevention program for the stationary source.

15. For the purpose of this Agreement:

- (a) At its stationary source, the Respondent operates a water treatment plant.
- (b) At its stationary source, the Respondent, at the time of inspection, had 16,000 pounds of chlorine on site for water disinfectant purposes.
- (c) At its stationary source, the Respondent, at the time of inspection, had one RMProgram level 3 covered process, which stores or otherwise uses chlorine in an amount exceeding its applicable threshold of 2,500 pounds.
- (d) On January 29, 2015, the EPA conducted an onsite inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered processes at its stationary source.
- (e) The Respondent could not demonstrate that 2010 population data for the off-site consequence analysis or other updated information was used for the most recent RMP submittal, March 2012.
- (f) The Respondent did not maintain any documentation of the off-site consequence analysis.
- (g) The Respondent's process safety information did not include a ventilation system design.
- (h) At the time of the inspection, piping in the chlorine room did not have labels indicating pipe contents and directional flow. The American National Standards Institute's, American Society Mechanical Engineer A13.1 requires identification and direction of flow for pipes containing hazardous substances. The facility could not provide documentation that piping complies with recognized and generally accepted good engineering practices.
- (i) The Respondent could not provide any process hazard analyses conducted for the chlorine process.
- (j) The Respondent could not provide annual certifications of the operating procedures since 2007.
- (k) The Respondent could not provide any compliance audits for the chlorine process.
- (l) The Respondent could not provide information that it informed its contractor of the known potential fire, explosion or toxic release hazards.
- (m) The Respondent could not provide information that the applicable provisions of the emergency response plan were explained to the contractor.
- (n) The Respondent could not provide information that it periodically evaluated the performance of the contractor in fulfilling their obligations.

E. ALLEGED VIOLATIONS OF LAW

16. Based on EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 C.F.R. Part 68 when it:

Failed to use the most recent Census data, or other updated information, to estimate the population potentially affected when defining offsite impacts as required by 40 C.F.R. § 68.30(c);

Failed to maintain documentation on the offsite consequence analysis as required by 40 C.F.R. § 68.39;

Failed to include ventilation system design in the process safety information as required by 40 C.F.R. § 68.65(d)(1)(v);

Failed to document that equipment complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2);

Failed to perform an initial process hazard analysis as required by 40 C.F.R. § 68.67(a);

Failed to certify annually that operating procedures are current and accurate as required by 40 C.F.R. § 68.69(c);

Failed to certify compliance with the provision of subpart D at least every three years to verify that procedures and practices developed under subpart D are adequate and are being followed as required by 40 C.F.R. § 68.79(a);

Failed to inform the contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process as required by 40 C.F.R. § 68.87(b)(2);

Failed to explain to the contractor the applicable provisions of the facility's emergency response actions as required by 40 C.F.R. § 68.87(b)(3); and

Failed to periodically evaluate the performance of the contract owner or operator as required by 40 C.F.R. § 68.87(b)(5).

F. TERMS OF CONSENT AGREEMENT

17. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) consents to any Permit Action;
- (g) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement;
- (h) waives its rights to appeal the Order accompanying this Agreement, and
- (i) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 C.F.R. Part 68.

18. For the purpose of this Agreement, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Southern District of Alabama; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

19. Penalty Payment. Respondent agrees to:

- a) pay the civil penalty of **TWENTY THOUSAND SIX HUNDRED TWENTY DOLLARS (\$20,620)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

1005 Convention Plaza

SL-MO-C2-GL

St. Louis, MO 63101 (Delivery Location Phone Number: 314-425-1819).

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Deanne Grant
Chemical Management and Emergency
Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

20. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

21. Supplemental Environmental Project.

- a) Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall

expend no less than **SIXTY NINE THOUSAND SIX HUNDRED DOLLARS (\$69,600)** for the purchase of twelve MSA G1 Self Contained Breathing Apparatuses for the Corbin Fire Department.

- b) Respondent agrees that in the event that Respondent's actual purchase of equipment deviates from the equipment specified above, Respondent shall provide information to EPA explaining the reason(s) for any such deviation. So long as the amount that Respondent spends equals or exceeds \$69,600, and the explanation for the deviation is acceptable to EPA, this provision shall be deemed to be satisfied. This Consent Agreement and Final Order shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.
- c) Respondent certifies the truth and accuracy of each of the following:
 - (1) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$69,600;
 - (2) That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
 - (3) That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
 - (4) That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
 - (5) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - (6) That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - (7) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
 - (8) That Respondent has inquired of the Corbin Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Corbin Fire Department that it is not a party to such a transaction.
- d) Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 21(a). If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 21(h).
- e) Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
- f) Respondent shall submit to EPA a SEP Completion Report, no later than sixty (60) calendar days after the effective date of this CAFO. The Report shall be sent to the Chemical Management and Emergency Planning Section, to the attention of Deanne Grant at the address provided above. The Report shall include the following:

- (1) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (2) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$69,600, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 21(a).

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

- g) In making any reference to the SEP, any public statement, oral or written, Respondent shall include the following language:
“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental protection Agency for violations of Section 112(r)(7) of the Clean Air Act (CAA).”
- h) Respondent shall pay to the United States a stipulated penalty of the difference between \$69,600 and the actual SEP expenditure if Respondent fails to timely and fully complete the activities described in Paragraph 21(a), including failure to spend the minimum amount of **SIXTY NINE THOUSAND SIX HUNDRED DOLLARS (\$69,600)**.
- i) For purposes of Paragraph 21(h), whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.
- j) Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late if Respondent fails to timely submit a SEP Completion Report as required by this CAFO.

22. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

23. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

24. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

25. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

26. Except as qualified by Paragraph 20, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTCHED FINAL ORDER

27. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
28. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
29. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
30. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.
31. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
32. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
33. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
34. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

THIS SECTION INTENTIONALLY LEFT BLANK

H. EFFECTIVE DATE

35. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk. The foregoing Consent Agreement in the Matter of Corbin Utilities Commission, Docket No. CAA-04-2016-8019(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Corbin Utilities Commission

By: Ronald W. Herd Date: 9/8/2016
Name: Ronald W. Herd (Typed or Printed)
Title: General Manager (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By: Carol G. Kemper Date: 10/14/16
Jeaneanne M. Gettle
Acting Director
Air, Pesticides and Toxics Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Corbin Utilities Commission)
)
Respondent.)
_____)


Docket No.
CAA-04-2016-8019(b)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent in ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED this 29th day of December, 20 16.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Corbin Utilities Commission, CAA-04-2016-8019(b), on the parties listed below in the manner indicated:

Robert W. Bookman
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

Michiko Kono
U. S. EPA, Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

Ronald Herd
Corbin Utilities Commission
1515 Cumberland Falls Highway
Corbin, Kentucky 40702

(Via Certified Mail -
Return Receipt Requested)

Date:

1-3-17



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511