



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 15 2015

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Scott Gerken, Esq.  
Stone & Gerken, P.A.  
4850 North Highway 19A  
Mount Dora, Florida 32757

Re: The City of Minneola Water Department  
Consent Agreement and Final Order  
Docket No. EPCRA-04-2015-2020(b)

Dear Mr. Gerken:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Lynda Crum of the U. S. Environmental Protection Agency Region 4 staff at (404) 562-9524.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief

Chemical Safety & Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

RECEIVED  
EPA REGION IV

2015 DEC 15 AM 7:05

HEARING CLERK

IN THE MATTER OF: )  
 )  
City of Minneola )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket Number: EPCRA-04-2015-2020(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is the City of Minneola.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, the authority by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

4. Respondent is the City of Minneola, a municipality operating in the State of Florida.

5. Respondent is a “person” and is the “owner or operator” of a “facility” as those terms are defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent’s facility, the City of Minneola’s Sugarloaf Water Treatment Plant, is located at 20104 Sugarloaf Mountain Road, Clermont, Florida.

### **III. EPA’s Allegations of Violations**

#### **Violation of Section 103(a) of CERCLA**

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required 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 the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Respondent was in charge of the facility during the relevant period described below.

10. Chlorine is a “hazardous substance” as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with a RQ of 10 pounds, as specified in 40 C.F.R. § 302.4.

11. On September 13, 2014, a release of chlorine above the RQ occurred at the facility.

12. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of chlorine in an amount equal to or greater than its RQ at Respondent’s facility, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after December 6, 2013. Each day a violation of

Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

#### Violations of Section 304(a) EPCRA

14. Section 304(a) of EPCRA, 42 U.S.C. §11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately provide notice to the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), when there has been a release of an EPCRA extremely hazardous substance, or a CERCLA hazardous substance in an amount equal to or greater than the RQ from a facility. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

15. Respondent was the owner or operator of the facility during the relevant period described herein.

16. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as defined under EPCRA Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and under 29 C.F.R. § 1910.1200(c).

17. Chlorine is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with a RQ of 10 pounds, as specified in 40 C.F.R. Part 355, Appendices. A & B.

18. On September 13, 2014, a release of chlorine above the RQ occurred at the facility. EPA alleges that the release resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

19. EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. §11004(a), and the applicable EPCRA regulations of 40 C.F.R. § 355, Subpart C, by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of chlorine in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

20. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) that occurred after December 6, 2013. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

22. Respondent waives any right to contest the EPA's allegations and its right to appeal the proposed final order accompanying this Consent Agreement.

23. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

24. Respondent certifies that, to the best of its knowledge, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA at the facility referenced in this CAFO.

25. Respondent has agreed to undertake and complete a Supplemental Environmental Project (SEP) in accordance with Section VI of this CAFO.

26. Compliance with this CAFO shall resolve the EPA's allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of CERCLA or other applicable laws and regulations.

27. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

#### **V. Final Order**

28. Respondent shall pay a civil penalty of **TWO THOUSAND, TWO HUNDRED TWELVE DOLLARS (\$2,212)** for the CERCLA violation alleged in Section III. Payment is due within thirty (30) days of the effective date of this CAFO.

29. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, Missouri 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection Agency  
Government Lockbox 979076  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
(314) 425-1818

The check shall reference on its face the facility name and the Docket Number of the CAFO.

30. Respondent shall pay a civil penalty of **TWO THOUSAND, TWO HUNDRED THIRTEEN DOLLARS (\$2,213)** for the EPCRA violations which shall be paid within thirty (30) days of the effective date of this CAFO.

31. Respondent shall pay the EPCRA penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
(314) 425-1818

The check shall reference on its face the facility name and the Docket Number of the CAFO.

32. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

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

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

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

33. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

## **VI. Supplemental Environmental Project**

34. 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 **SIXTEEN THOUSAND, NINE HUNDRED NINETY DOLLARS (\$16,990)** for the purchase of the following equipment for donation to the City of Minneola Fire Department:

<u>Quantity</u>	<u>Description</u>
4	Scott X3 Air- Pak; Item # X3312021200201-2.22 Standard harness, Standard belt, Regulator with Standard hose; Dual EBSS

This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

35. Respondent certifies that:

- a. all cost information provided to the EPA in connection with the EPA's approval of the SEP described in paragraph 34 is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$16,990**;
- b. the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

36. Respondent also certifies that:

- a. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 34; and
- b. It has inquired of the City of Minneola Fire Department whether the City of Minneola Fire Department 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 City of Minneola Fire Department that it is not a party to such a transaction.

37. Respondent further certifies that, as of the date this CAFO is signed, it is not required to perform or develop any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant, or as injunctive relief awarded in any other action in any forum. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind, and Respondent will not receive reimbursement for any portion of this SEP from another person or entity.

38. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 34. If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 39.

39. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of **SIXTEEN THOUSAND, NINE HUNDRED NINETY DOLLARS (\$16,990)**, Respondent shall pay to the United States, a stipulated penalty of the difference between **\$16,990** and the actual SEP expenditure.

40. For purposes of Paragraphs 38 and 39, the determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

41. Any public statement, oral or written, by Respondent making any reference to the SEP 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 violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 304 of the Emergency Planning Community Right to Know Act (EPCRA).”

42. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the Chemical Management & Emergency Planning Section, to the attention of Kerry Platt at the address provided above in Paragraph 32. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than **\$16,990**, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 34.

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

43. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of **\$100** for each calendar day that the report is late.

44. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from EPA.



45. 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.

46. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

47. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

48. This CAFO shall be binding upon the Respondent, its successors, and assigns.

49. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9169

50. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

**THIS SECTION INTENTIONALLY LEFT BLANK**

**VII. Effective Date**

51. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

City of Minneola

By:  (Signed) Date: 9/15/15

Name: MARK JOHNSON (Typed or Printed)

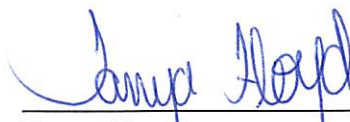
Title: CITY MANAGER (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 11-13-15

Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 11<sup>th</sup> day of December, 2015



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 the City of Minneola Water Department, Docket Number: EPCRA-04-2015-2020(b), on the parties listed below in the manner indicated:


Robert W. Bookman (Via EPA's internal mail)  
U.S. EPA, Region 4  
Chemical Management  
and Emergency Planning Section  
61 Forsyth Street S.W.  
Atlanta, GA 30303

Lynda Crum (Via EPA's internal mail)  
U.S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street S.W.  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
Senior Attorney  
U.S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street S.W.  
Atlanta, GA 30303

Scott Gerken , Esq. (Via Certified Mail - Return Receipt Requested)  
Stone & Gerken, P.A.  
4850 North Highway 19A  
Mount Dora, FL 32757

Date: 12-15-15

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