



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 26 2016

UNITED PARCEL SERVICE

Mr. Mike Nickell
General Manager
Morehead Utility Plant Board
135 South Wilson Avenue
Morehead, Kentucky 40351

Re: Morehead Utility Plant Board
Consent Agreement and Final Order
CAA-04-2015-8009(b)

Dear Mr. Nickell:

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-04-2015-8009(b)) involving Morehead Utility Plant Board. 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.

If you have any questions, please call Mr. Victor Weeks at (404) 562-9189.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bookman".

Robert W. Bookman
Chief
Chemical Management and Emergency
Planning Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Morehead Utility Plant Board

Respondent.

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Docket Number: CAA-04-2015-2809

2015 APR 26 PM 2:04
HEARING CLERK
USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules), published in 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is Morehead Utility Plant Board (hereinafter, "Respondent").

2. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under the CAA to the Regional Administrators by the EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18, and agree 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

- 3. Respondent, Morehead Utility Plant Board, is a municipality doing business in the Commonwealth of Kentucky.
- 4. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to the provisions of the CAA and regulations promulgated thereunder.
- 5. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the

CAA, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 450 Filtration Road, Morehead, Kentucky 40351.

6. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 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 CAA, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

7. Pursuant to Section 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR 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 more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

8. The Respondent, at its stationary source identified in Paragraph 5 of this CAFO, has an RMProgram covered process, water treatment, which store or otherwise uses chlorine in an amount exceeding its applicable threshold of 2,500 pounds.

9. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 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 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

10. Respondent has submitted and registered an RMPlan to the EPA for the stationary source identified in Paragraph 5 of this CAFO. Respondent has developed an RMProgram accidental release prevention program for the stationary source identified in Paragraph 5 of this CAFO.

11. Based on an RMProgram compliance monitoring investigation initiated by EPA on March 21, 2013, the EPA alleges that the Respondent violated the codified rules governing the CAA Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

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

Failed to include the safe upper and lower limits for such items as temperatures, pressures, flows or compositions in the written safety information for the technology of the process as required by 40 CFR § 68.65(c)(1)(iv);

Failed to include the consequences of deviations in the written process safety information for the technology of the process as required by 40 CFR § 68.65(c)(1)(v);

Failed to include a piping and instrument diagrams in the written process safety information for the equipment in the process as required by 40 CFR § 68.65(d)(1)(ii);

Failed to perform an initial process hazard analysis on the chlorine process as required by 40 CFR § 68.67(a);

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

Failed to certify evaluation of compliance with the risk management program provisions at least every three years as required by 40 CFR § 68.79(a); and

Failed to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as required by 40 CFR § 68.87(b)(5).

III. Consent Agreement

12. 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.
13. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.
14. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
15. Respondent certifies that as of the date of execution of this CAFO, to the best of the Respondent's knowledge after a good faith inquiry, it is compliant with the applicable requirements of Section 112(r) of the CAA.
16. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violations of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
17. 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 the RMProgram.

IV. Final Order

18. Respondent agrees to pay a civil penalty of **THIRTY THOUSAND TWENTY THREE DOLLARS (\$30,023)**, to be paid within thirty (30) days of the effective date of this CAFO.

19. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," 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

Field Tag 4200 of the Fedwire message should read:

"D 68010727 Environmental Protection Agency";

For payment sent via U.S. Postal Service

U.S. Environmental Protection Agency

Cincinnati Finance Center

PO Box 979077

St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)

U.S. Environmental Protection Agency

Cincinnati Finance Center

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson @ 314-425-1818.

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

20. 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

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

21. For the purposes of state and federal income taxation, 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 penalty payment shall constitute a violation of this CAFO.
22. 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.
23. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
24. This CAFO shall be binding upon the Respondent, its successors and assigns.
25. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9169.
26. 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.

V. Effective Date

27. 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:


Morehead Utility Plant Board

By:  Date: 3/4/14

Name: Holly McBlair Rosas (Typed or Printed)

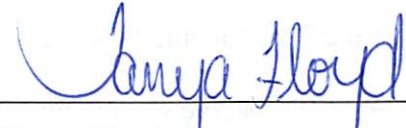
Title: General Manager (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 3/30/14

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

APPROVED AND SO ORDERED this 26th day of April, 20 14.



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 Expedited Settlement Agreement, in the matter of Morehead Utility Plant Board, CAA-04-2015-8009(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, GA 30303

(Via EPA's internal mail)

Ellen Rouch
U. S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

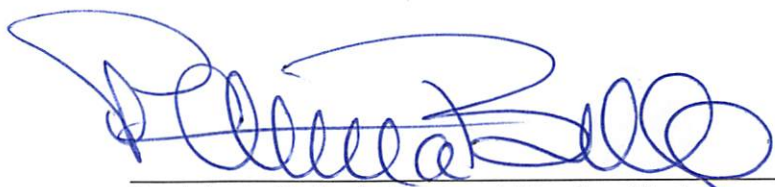
(Via EPA's internal mail)

Mike Nickell
General Manager
Morehead Utility Plant Board
135 South Wilson Avenue
Morehead, KY 40351

(Via Certified Mail -
Return Receipt Requested)

Date:

4-26-16



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