



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

**OCT 27 2015**

Mr. Edward Broussard, City Manager  
City of Tyler  
Lake Palestine WTP  
212 N. Bonner  
Tyler, TX 75702


**Re: Complaint and Consent Agreement and Final Order**  
Docket No. **CAA-06-2015-3501**

Dear Mr. Broussard:

Enclosed for your records is a copy of the fully executed Complaint and Consent Agreement and Final Order (Complaint and CAFO) for the Clean Air Act Section 112(r) violations found at the City of Tyler, Lake Palestine Water Treatment Plant facility located in Tyler, Texas. Please note that if you have not yet paid the assessed penalty, payment is due no later than 30 days after the date it was signed by the Regional Judicial Officer.

If you have any questions regarding this matter, please do not hesitate to call. I may be reached by phone at (214) 665-6708 or by email at [rogers.elizabeth@epa.gov](mailto:rogers.elizabeth@epa.gov).

Sincerely,

  
Elizabeth Rogers  
RMP Enforcement Officer  
Prevention and Response Branch  
USEPA - Region 6

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
OCT 07 2015  
FEDERAL REGISTER  
DALLAS, TEXAS

IN THE MATTER OF: )  
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)  
City of Tyler )  
Lake Palestine Water Treatment Plant ) DOCKET NO. CAA 06-2015-3501  
)  
Tyler, Texas )  
)  
Respondent )  
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**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Superfund Division, United States Environmental Protection Agency (EPA), Region 6, and City of Tyler Lake Palestine Water Treatment Plant, (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. In order to avoid the costs and uncertainties of litigation and for the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and to appeal the proposed Final Order set forth in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO. The Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

5. The Respondent and EPA each represents that it is duly authorized to execute this agreement and that the party signing this agreement on behalf of the Party is duly authorized to bind the Party to the terms and conditions of this agreement.

6. The Respondent agrees that the provisions of this CAFO, when effective, shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## **II. STATUTORY AND REGULATORY BACKGROUND**

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

\* \* \* \*

(B) (ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

9. In accordance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated the Chemical Accident Prevention Provisions, which are codified at 40 C.F.R. Part 68. These regulations, commonly referred to as the “Risk Management Program” (RMP) regulations, contain requirements for owners or operators of stationary sources concerning the prevention of accidental chemical releases.

10. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the RMP regulations.

11. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source with a process subject to the “Program 2” requirements of the RMP regulations must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart C.

12. Pursuant to Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to the Risk Management Program requirements and regulations in violation of such requirements and regulations.

### **III. JURISDICTIONAL ALLEGATIONS**

13. The Respondent is a municipal water treatment and distribution system in the State of Texas. The Respondent’s principal place of business is located at P.O. Box 2039, Tyler, TX.

14. The Respondent is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

15. The Respondent owns and/or operates a surface water treatment plant (North American Industrial Classification System Code 22131), located at 14792 County Road 192, Tyler, TX 75702 (Facility).

16. The Respondent’s surface water treatment plant is a “stationary source” as that term

is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

17. The Respondent is the owner and/or operator of the Facility.

18. At all times relevant to this CAFO, the Respondent was engaged in, among other things, the treatment and distribution of drinking water.

19. Gaseous chlorine and anhydrous ammonia are “regulated substances.”

40 C.F.R. § 68.130

20. The Respondent’s chlorination unit is a “process” as that term is defined by 40 C.F.R. § 68.3.

21. At all times relevant to this CAFO, the Respondent’s chlorination unit has gaseous chlorine present above the “threshold quantity” determined by 40 C.F.R. § 68.115.

22. The Respondent’s chlorination unit is subject to Program Level 2 as defined in 40 C.F.R. § 68.10(d), and must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart C.

23. On or about April 17, 2013, an inspection of Respondent’s Facility including the chlorination unit was conducted by representatives of EPA pursuant to Section 114 of the CAA, 42 U.S.C. § 7414 (“the Inspection”).

#### **IV. ALLEGED VIOLATIONS**

##### **Count I – Failure to Adequately Train Plant Operators**

24. 40 C.F.R. § 68.54 states:

- (a) The owner or operator shall ensure that each employee presently operating a process and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in 40 C.F.R. § 68.52 that pertain to their duties.
- (b) Refresher training. Refresher training shall be provided at least every three years, and more often is necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process.

25. While respondent has an operator training program, it is geared toward obtaining and retaining state required operator certifications. Site specific operating procedure training is not well documented, consisting primarily of sign in sheets for periodic meetings during which plant related issues are discussed.

26. Therefore Respondent violated 40 C.F.R. § 68.54 by failing to provide or adequately document operator training that complies with 40 C.F.R. § 68.54 (a) and (b).

### **Count II – Failure to Adequately Maintain Process Equipment**

27. 40 C.F.R. § 68.56 requires that owners or operators of regulated processes prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. Procedures or instructions from equipment vendors, federal or state regulations or industry codes may serve as the basis for the procedures implemented.

28. Respondent utilizes one ton cylinders connected to a manifold via “pigtailes” (short coiled flexible tubing) to supply chlorine gas to the disinfection unit. Respondent acknowledges that the recommended replacement frequency for the pigtailes is once per year. Purchasing records indicated that the last time any pigtailes were purchased prior to April 1, 2013 was in 2010.

29. On the morning of April 1, 2013 one of the pigtailes on the reserve cylinders failed, resulting in a release of chlorine gas over approximately 80 minutes. During the release a plant operator reporting for duty drove through the chlorine gas cloud resulting in injuries requiring medical treatment.

30. Therefore Respondent violated 40 C.F.R. § 68.56 by failing to timely replace the pigtailes on the chlorine manifolds.

### **Count III – Failure to Timely Conduct Compliance Audits**

31. 40 C.F.R. § 68.58 requires the owner or operator to evaluate compliance with the prevention program requirements at least every three years.

32. At the time of the inspection Respondent was able to produce two undated compliance audits, neither of which showed any deficiencies in program implementation. Facility personnel had no knowledge of when the audits had been conducted.

33. Therefore Respondent violated 40 C.F.R. § 68.58 by failing to document when the audits had been conducted or whether they had been conducted at the required frequency.

## **V. TERMS OF SETTLEMENT**

### **A. CIVIL PENALTY**

34. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to Twenty-Five Thousand Dollars (\$25,000)<sup>1</sup> per day for each violation of the CAA. Upon consideration of the entire record herein, including the Allegations, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, the Parties have agreed that \$44,000 is an appropriate penalty to resolve this enforcement action.

However, Respondent has agreed to undertake a Supplemental Environmental Project ("SEP") to

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<sup>1</sup> The maximum \$25,000 per day penalty was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 for violations occurring between January 30, 1997 and March 15, 2004, to \$32,500 for violations occurring between March 15, 2004 and January 12, 2009, and to \$37,500 for violations occurring after January 12, 2009. On December 6, 2013, the Civil Penalty Inflation Adjustment Rule was modified; however, the maximum per day penalty for violations of 112(r) of the Clean Air Act was not adjusted and remains \$37,500 per day.

mitigate the penalty. Pursuant to this agreement the Respondent shall pay an amount of \$11,000 to the U.S. Department of Treasury as indicated below. Respondent shall implement a SEP, as described in paragraph 36 of this document. The SEP mitigation ratio is three to one.

Respondent shall spend no less than \$99,000 implementing the SEP. It is ORDERED that Respondent pay the amount of \$11,000 to the U.S. Department of the Treasury and perform a SEP that costs no less than \$99,000.

35. Respondent has chosen to undertake a SEP to mitigate the agreed penalty of \$44,000 to resolve the alleged violations described in this agreement. The parties have evaluated the proposed SEP project and agree that it meets the criteria of the SEP policy and is worthy of consideration. The Parties have agreed that a three to one mitigation ratio is appropriate in this case. The Parties agree that the activities required by this SEP are not required by law, do not create a profit for Respondent, and provide a real environmental and public health benefit.

36. Respondent has agreed to perform a SEP. Pursuant to that SEP, the Respondent shall install an automated system for shutting down and automatically sealing chlorine cylinders from releasing chlorine gas in the event of an unexpected release of chlorine gas at the Lake Palestine Water Treatment Plant. The system shall operate automatically and without need for human control or intervention. Respondent shall spend no less than \$99,000 implementing this SEP. The SEP shall be completed within one year of the effective date of this CAFO. When the SEP has been completed the Respondent shall provide EPA with notice, a certification that the SEP has been completed, and documentation showing the cost to implement the SEP. If, after implementation, the SEP costs do not equal or exceed \$99,000 then Respondent may implement this SEP at other water treatment facilities under control of Respondent.

37. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay



the cash portion of the mitigated civil penalty of \$11,000 by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381.

**PLEASE NOTE: Docket number CAA-06-2015-3501** shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name,

and docket numbers of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Elizabeth Rogers  
RMP Enforcement Officer  
Superfund Prevention and Response Branch (6SF-PC)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

38. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

39. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not

paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

39. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

40. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

41. This Consent Agreement is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy.

**B. RETENTION OF ENFORCEMENT RIGHTS**

42. The EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, or permitting conditions other than those alleged herein.

43. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

44. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

**C. COSTS**

45. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**D. COMPLIANCE**

46. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

**E. EFFECTIVE DATE**

47. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Date: 10/09/2015

Edward Broussard

Edward Broussard  
City Manager  
City of Tyler

RECEIVED  
15 OCT 15 AM 11:02  
SUPERFUND DIV.  
PREVENTION & M. SPONCH  
BRD HIGH 1632.01

**FOR THE COMPLAINANT:**

Date: 10/26/15

Carl E. Edlund, P.E.

Carl E. Edlund, P.E.  
Director  
Superfund Division  
U.S. EPA - Region 6

**V. FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

10/27/15

Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of October, 2015, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED \_\_\_\_\_**

Mr. Edward Broussard  
City Manager  
City of Tyler  
212 N. Bonner  
Tyler, Texas 75702

And

Mr. Jim Mathews, Esquire  
Mathews & Freeland, LLP  
8140 N. Mopac  
Building 2, Suite 260  
Austin, Texas 78759



Elizabeth Rogers  
RMP Enforcement Officer  
U.S. EPA – Region 6  
Dallas, Texas