



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

March 1, 2011

HAND DELIVERY

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Consent Agreement and Final Order
U.S. EPA Docket No. CAA-03-2011-0091

Dear Ms. Guy:

Enclosed for filing is a fully executed Consent Agreement and Final Order initiating and settling this matter pursuant to 40 C.F.R. § 22.13(b). A courtesy copy of the Consent Agreement and Final Order is also enclosed.

Sincerely,

A handwritten signature in black ink that reads "Allison F. Gardner".

Allison F. Gardner
Senior Assistant Regional Counsel

cc: William Gleason Barbin, Esq.



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)	
)	EPA Docket No.: CAA-03-2011-0091
Redevelopment Authority of the)	
City of Johnstown)	
Public Safety Building, 4th Floor)	Proceedings Pursuant to Sections 112(r) and
401 Washington Street)	113(d) of the Clean Air Act, as amended,
Johnstown, Pennsylvania)	42 U.S.C. §§ 7412(r), 7413(d)
15901,)	
)	
Respondent.)	
)	
)	
Johnstown Wastewater)	
Treatment Plant)	
241 Asphalt Road)	
Johnstown, Pennsylvania)	
15906,)	
)	
Facility.)	
)	

CONSENT AGREEMENT

WHEREAS, Respondent has contracted with The EADS Group to oversee the implementation of the Risk Management Program regulations ("RMP Regulations"), 40 C.F.R. Part 68, at the Johnstown Wastewater Treatment Plant located at 241 Asphalt Road, in Johnstown, Pennsylvania (the "Facility");

WHEREAS, Respondent has committed to renewing its contract with The EADS Group on an annual basis or, in the alternative, hiring a contractor or employee with equivalent competence to oversee the implementation of the RMP Regulations at the Facility; and

WHEREAS, the parties believe that settlement of this matter is in the best interest of the parties. Therefore, the parties agree to the following:

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 113(a)(3)(A) and 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3)(A), 7413(d), delegated to the Regional Administrator by EPA Delegation No. 7-6-A, and redelegated to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant") by EPA Region III Delegation No. 7-6-A. This Consent Agreement is also proposed and entered into under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

FINDINGS OF FACT

1. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA, among other things, to promulgate regulations to prevent accidental releases of certain regulated substances. Pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator must promulgate a list of regulated substances, with threshold quantities, and define the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

2. On June 20, 1996, EPA promulgated the RMP Regulations, 40 C.F.R. Part 68, which implement Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). These regulations require each owner and operator of a stationary source to develop and implement a risk management program that includes a hazard review, a prevention program, and an emergency response program.

3. The RMP Regulations set forth the requirements for the risk management program that must be established at each stationary source. Each owner/operator of a stationary source must describe the risk management program for the source in a Risk Management Plan ("RM Plan") which must be submitted to EPA.

4. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted for all covered processes, by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, no

later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

5. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), prohibits any person from operating a stationary source in violation of the RMP Regulations after the regulations' effective date.

6. Pursuant to 40 C.F.R. § 68.10, the RMP Regulations are applicable to any owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

7. Respondent the Redevelopment Authority of Johnstown ("JRA" or "Respondent") is a municipal authority incorporated under the Urban Redevelopment Law of the Commonwealth of Pennsylvania, with its principal place of business located at Public Safety building, 4th Floor, 401 Washington Street in Johnstown, Pennsylvania.

8. As a municipal authority, Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

9. Beginning on or about October 4, 2004, and at all times relevant to this CA/FO, Respondent has owned and operated the wastewater treatment plant located at 241 Asphalt Road, in Johnstown, Pennsylvania ("Johnstown WWTP" or the "Facility"), within the meaning of Section 112(r)(7)(B)(ii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(ii), and 40 C.F.R. §§ 68.10, 68.12, and 68.150.

10. The Johnstown facility is a "stationary source" as that term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

11. Since at least October 4, 2004, Respondent has handled, stored, and used, and continues to handle, store, and use, between approximately 16,000 pounds and 28,000 pounds of chlorine, Chemical Abstracts Service ("CAS") No. 7782-50-5, to treat sewage water at the Johnstown WWTP.

12. Chlorine, is a "regulated substance," as defined by Section 112(r)(2)(B) and (3) of the CAA, 42 U.S.C. § 7412(r)(2)(B) and (3), and 40 C.F.R. § 68.3, and listed in Table 1 of 40 C.F.R. § 68.130. Chlorine was listed as a regulated substance in the text of Section 112(r)(3), 42 U.S.C. § 7412(r)(3), when that Section was added to the CAA in 1990.

13. The "threshold quantity," as that term is defined by 40 C.F.R. § 68.3, and used in Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), for chlorine is 2,500 pounds, as listed in Table 1 of 40 C.F.R. § 68.130.

14. Respondent's storage of chlorine is a "process," as defined by 40 C.F.R. § 68.3.

15. Respondent is subject to the RMP Regulations set forth at 40 C.F.R. Part 68.

16. On or about November 1, 2004, Respondent submitted to EPA a risk management plan for the Facility, certifying that it had developed and implemented a risk management program for the Facility.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CAA AND 40 C.F.R. § 68.12 –
FAILURE TO DEVELOP AND IMPLEMENT A RISK MANAGEMENT PROGRAM**

17. The findings of fact contained in paragraphs 1 through 16 of this CA/FO are incorporated by reference herein as though fully set forth at length.

18. The RMP Regulations set forth different requirements for facilities depending on whether they are Program 1, Program 2, or Program 3 facilities. Pursuant to 40 C.F.R. § 68.10(c), a facility is eligible for consideration as a Program 2 facility if it does not meet the eligibility requirements for Program 1 or Program 3.

19. The Johnstown WWTP is a Program 2 facility because it does not meet the eligibility requirements for Program 1 set forth in 40 C.F.R. § 68.10(b), and it does not meet the requirements for Program 3 eligibility set forth in 40 C.F.R. § 68.10(d).

20. Pursuant to 40 C.F.R. § 68.12, a Program 2 facility is specifically required, *inter alia*, to develop and implement a management system, as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. Part 68, Subpart B; implement a risk prevention program, as provided in 40 C.F.R. Part 68, Subpart C or Subpart D; and develop and implement an emergency response program, as provided in 40 C.F.R. Part 68, Subpart E.

21. On or about July 9, 2008, EPA conducted an inspection of the Johnstown facility to assess compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68. During the inspection, Respondent was unable to produce documentation that it had developed and implemented for the Johnstown WWTP a risk management program. Specifically it had failed to conduct an updated hazard assessment as required by 40 C.F.R. Part 68, Subpart B and failed to implement a prevention program, as required by 40 C.F.R. Part 68, Subpart C or Subpart D.

22. On or about October 22, 2008, EPA issued an Administrative Compliance Order (“Order”), Docket No. CAA-2008-0391-DA, to Respondent, which ordered Respondent to develop and implement a risk management program for the Johnstown WWTP.¹ On or about October 23, 2008, the JRA notified EPA of its intent to comply with the Order.

¹ The Order was mistakenly issued to the City of Johnstown on September 22, 2008. On October 22, 2008, it was modified to reflect that JRA owns and operates the Johnstown WWTP.

23. On or about March 17, 2010, EPA reviewed the activities undertaken by Respondent under the Order and determined that Respondent had complied with the Order and had implemented a risk management program for the Johnstown WWTP. Therefore, on September 8, 2010, EPA terminated the Order.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CAA AND 40 C.F.R. § 68.12 –
FAILURE TO DEVELOP AND IMPLEMENT A RISK MANAGEMENT PROGRAM**

24. Respondent's failure to develop and implement a risk management program for the Johnstown WWTP, specifically its failure to conduct an updated hazard assessment as required by 40 C.F.R. Part 68, Subpart B and to implement a prevention program as required by 40 C.F.R. Part 68, Subpart C or Subpart D, is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.12, and is, therefore, subject to the assessment of penalties under Section 113(d) of CERCLA, 42 U.S.C. § 7413(d).

CIVIL PENALTY

25. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), set forth above, in the amount of **\$60,000.00**.

PAYMENT TERMS

26. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of **\$60,000.00** no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer. Payment of the civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

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

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

27. The Respondent shall submit proof of the penalty payment, noting the title and docket number of this case, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

28. The civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), and is consistent with 40 C.F.R. Part 19 and EPA's *Combined Enforcement Policy for Section 112(r) of the Clean Air Act*, dated August 15, 2001 ("CEP").

29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

30. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a fully-executed copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

31. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for

administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

32. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

33. Failure by the Respondent to pay the \$60,000.00 penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

34. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

35. Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.

36. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations or conclusions of law set forth in this CA, except as set forth in Paragraph 34 above, but expressly waives its rights to contest said allegations.

37. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 113 of the CAA, 42 U.S.C. § 7413.

38. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

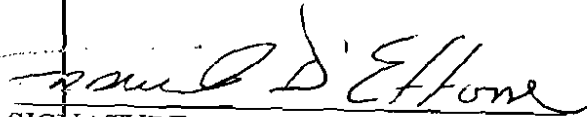
39. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

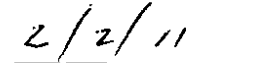
In re: Johnstown Redevelopment Authority

CAA-03-2011-0091

40. Each party to this action shall bear its own costs and attorney's fees.

FOR THE REDEVELOPMENT AUTHORITY OF JOHNSTOWN:


SIGNATURE


DATE


Name: Francis G. D'Ettorre

Title: Project Manager

In re: Johnstown Redevelopment Authority

CAA-03-2011-0091

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

2/08/11
DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Proceedings Pursuant to Sections 112(r) and)
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42 U.S.C. §§ 7412(r), 7413(d))

Respondent.)

Johnstown Wastewater)
Treatment Plant)
241 Asphalt Road)
Johnstown, Pennsylvania)
15906,)

Facility.)

FINAL ORDER

Pursuant to Section 113 of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7413, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Renee Sarajian

Renee Sarajian
Regional Judicial Officer
EPA, Region III

3/1/11
DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Consent Agreement and Final Order

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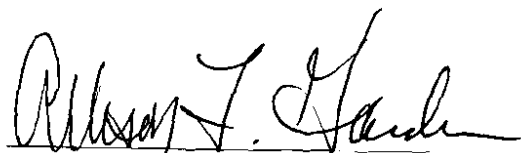
Facility.)
)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

William Gleason Barbin Esq.
206 Main St.
Johnstown, Pennsylvania 15901

3/11/11
DATE


Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
Counsel for Complainant
(215) 814-2631