

Sincerely,

A handwritten signature in black ink, appearing to read "MEHans", with a horizontal line extending to the right.

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Steve Tomlyanovich
Division of Homeland Security
and Emergency Management
444 Cedar Street, Suite 223
St. Paul, Minnesota 55101

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2017-0004

In the Matter of:)

City of Mahtomedi)
Mahtomedi, Minnesota)

Respondent.)



Docket Nos.)

EPCRA-05-2017-0014)

CERCLA-05-2017-0006)

Proceeding to Assess a Civil Penalty Under)
Section 109(b) of the Comprehensive)
Environmental Response, Compensation and)
Liability Act, and Section 325(b)(2), (c)(1))
and (c)(2) of the Emergency Planning and)
Community Right-to-Know Act of 1986)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2) and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the 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. The Complainant is, by lawful delegation, the Director, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is the City of Mahtomedi, a municipality in the State of Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in quantities equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004, provide mechanisms to alert federal and state agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

11. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility shall provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

12. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

13. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

14. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 201 Wedgewood Drive, Mahtomedi, Minnesota (facility).

16. At all times relevant to this CAFO, Respondent was in charge of the facility.

17. Respondent’s facility consists of a building, structure, installation, equipment, pipe, storage container or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

18. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

20. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. Chlorine CAS# 7782-50-5 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. Chlorine CAS# 7782-50-5 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

23. Chlorine CAS# 7782-50-5 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

24. Chlorine CAS# 7782-50-5 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

25. On December 16, 2011, at or about 5:15 p.m. Central Time a release occurred from Respondent's facility of approximately 99 pounds of chlorine (the release).

26. In a 24-hour time period, the release of chlorine exceeded 10 pounds.

27. During the release, approximately 99 pounds of chlorine leaked, emitted, emptied, discharged, or escaped into the ambient air.

28. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

29. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

30. Respondent had knowledge of the release on December 16, 2011 at approximately 5:15 p.m. Central Time.

31. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

32. The release was likely to affect the State of Minnesota.

33. At all times relevant to this CAFO, the Minnesota Division of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

34. Respondent notified the NRC of the release on December 16, 2011, at 9:56 p.m. Central Time.

35. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

36. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

37. Respondent provided written follow-up emergency notice of the release to the SERC on November 9, 2015.

38. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

39. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

40. Complainant has determined that an appropriate civil penalty to settle this action is \$14,641.50 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency

Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,641.50 civil penalty for the CERCLA violation. Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: In the Matter of the City of Mahtomedi, the docket numbers CERCLA-05-2017-0006 and _____ of this CAFO and the billing document number 2751730B006.

42. Complainant has determined that an appropriate civil penalty to settle this action is \$14,641.50 for the EPCRA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation[s] and any other matters as justice may require. Complainant also considered U.S. EPA's CERCLA/EPCRA Enforcement Response Policy.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,641.50 civil penalty for the EPCRA violations. Respondent must pay the penalty by electronic funds transfer payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read:
"D68010727 Environmental Protection Agency"

44. In the comment or description field of the electronic funds transfer, state the following: In the Matter of the City of Mahtomedi and the docket numbers

EPCRA-05-2017-0014 and _____ of this CAFO.

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondent does not timely pay the civil penalty U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

49. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

51. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA and other applicable federal, state and local laws and regulations.

52. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

53. The terms of this CAFO bind Respondent and its successors and assigns.

54. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

55. Each party agrees to bear its own costs and attorney's fees in this action.

56. This CAFO constitutes the entire agreement between the parties.

57. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: zander.rachel@epa.gov (for Complainant), and JKarlovich@levander.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

Zander, Rachel

From: Jay Karlovich <JKarlovich@levander.com>
Sent: Friday, April 07, 2017 11:00 AM
To: Zander, Rachel
Cc: sneilson@ci.mahtomedi.mn.us; Scott Schaefer (sschaefer@ci.mahtomedi.mn.us); Bruce Thielen (BThielen@ci.mahtomedi.mn.us)
Subject: FW: Mahtomedi - correcting CAFO error
Attachments: 20170407 EPA Mahtomedi CAFO.pdf

Rachel,

I just got off the phone with City Administrator Scott Neilson, and you have our consent to switch out the pages to correct the typographical error. We are looking forward to this matter being resolved.

Have a good weekend.

Jay

From: Zander, Rachel [mailto:Zander.Rachel@epa.gov]
Sent: Friday, April 07, 2017 10:13 AM
To: Jay Karlovich
Subject: Mahtomedi - correcting CAFO error

We've caught an error in the CAFO, and I want to bring it to your attention.

Paragraph 41 reads that "Respondent must pay a \$14,283.50 civil penalty." It should read "a \$14,641.50 civil penalty." We agreed to settle for a total penalty of \$29,283 and half of that (for the CERCLA portion) is \$14,641.50. The correct CERCLA penalty number is referenced in the prior paragraph, number 40.

I'm prepared to substitute the corrected page 6 (see the attached updated CAFO) for EPA signature and filing, if you agree. It's not EPA practice to require all parties to re-sign in this type of situation, though please feel free to call if you would like to discuss.

Also, thank you for copying me on your email to the City regarding the tolling agreement. I look forward to receiving the City's signed version, and then will send you a fully executed copy.

Thank you,
Rachel

Rachel Toenjes Zander
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604
Phone: 312-353-1505

In the Matter of: City of Mahtomedi, Minnesota

Docket Nos. MM-05-2017-0004

CERCLA-05-2017-0006

EPCRA-05-2017-0014

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

April 17, 2017
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: City of Mahtomedi, Minnesota

Docket Nos. MM-05-2017-0004

CERCLA-05-2017-0006

EPCRA-05-2017-0014

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on April 10, 2017 in the following manner to the addressees:

Copy by Certified Mail

Return Receipt Requested: Jay Karlovich
JKarlovich@levander.com

Copy by E-mail to

Attorney for Complainant: Rachel Zander
zander.rachel@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: April 10, 2017



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5