



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

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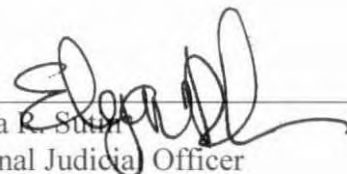
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2011-0006

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| IN THE MATTER OF: |) | |
| |) | |
| CEDAR CITY WASTEWATER |) | FINAL ORDER |
| TREATMENT PLANT |) | |
| 10 North Main Street |) | |
| Cedar City, UT 84721 |) | |
| |) | |
| RESPONDENT |) | |

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 7th DAY OF March, 2011.



Elyana R. Suter
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

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| | | |
|---------------------------------------|---|------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| Cedar City Wastewater Treatment Plant |) | |
| 10 North Main Street |) | COMBINED COMPLAINT AND |
| Cedar City, Utah 84721 |) | CONSENT AGREEMENT. |
| |) | |
| Respondent |) | DOCKET NO.: CAA-08-2011-0006 |
| |) | |
| |) | |

Complainant, United States Environmental Protection Agency- Region 8 (EPA), and Respondent, Cedar City Wastewater Treatment Plant (CCWTP), by their undersigned representatives, hereby consent and agree as follows:

I. INTRODUCTORY TERMS

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Rules of Practice), 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and amicably concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).
2. EPA and CCWTP agree that EPA has jurisdiction over this matter pursuant to §113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413. The EPA is authorized to take action in this matter through its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, pursuant to §§ 113(a)(3)(B) and (d) of the Act, 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b), for violations of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r).
3. EPA and the U.S. Department of Justice have determined, pursuant to §113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this type of case through administrative enforcement action.

II. STATUTORY AND REGULATORY FRAMEWORK

4. The regulations promulgated by EPA pursuant to authority under the Act, implementing the "Risk Management Program" requirements, are set forth in part 68 of Title 40 of the Code of Federal Regulations (C.F.R.).

5. Under 40 C.F.R. § 68.3, the following definitions apply:
 - “*Stationary source*” means “any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.”
 - “*Regulated substance*” means “any substance listed pursuant to § 112(r)(3) of the Clean Air Act as amended, in § 68.130.” Threshold quantities for the regulated substances are included in § 68.130.
6. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity is required to prepare and implement a risk management plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source.
7. Pursuant to § 302(e) of the Act, 42 U.S.C. § 7602(e), the term “*person*” includes, in relevant part, “an individual, corporation, or partnership.”
8. CCWTP is a “person” as defined by § 302(e) of the Act, 42 U.S.C. § 7602(e), and thus subject to regulation.

III. GENERAL ALLEGATIONS

9. Respondent is the owner and/or operator of the CCWTP located at 10 North Main Street, Cedar City, Utah (the “Facility”).
10. Respondent uses, handles, and/or stores, chlorine, a regulated substance pursuant to § 112(r)(2) and (3) of the Clean Air Act and 40 C.F.R. § 68.3, which is listed at 40 C.F.R. § 68.130. The threshold quantity requiring the submittal of an RMP for chlorine, as listed in 40 C.F.R. § 68.130, Table 1, is 2,500 pounds.
11. On June 24, 2009, an RMP was submitted for the Facility which specified that Respondent had 8,000 pounds of chlorine in a process at the Facility, and which identified the chlorine process as Program 3.
12. EPA conducted an inspection of the Facility on September 16, 2010, to assess compliance with § 112(r) of the Clean Air Act.
13. Information collected during the September 16, 2010 inspection confirmed that the Facility had greater than 2,500 pounds of chlorine in a process.

IV. SPECIFIC ALLEGATIONS

14. At the time of EPA's inspection, Respondent had not met the requirements of 40 C.F.R. part 68. Specifically, on the day of EPA's inspection, Respondent:
- a) had not developed and implemented a management system as required by 40 C.F.R. § 68.15;
 - b) had not documented that equipment complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2);
 - c) had not performed an initial process hazard analysis as by 40 C.F.R. § 68.67(a);
 - d) had not certified annually that the operating procedures are current and accurate as required by 40 C.F.R. § 68.69(c);
 - e) had not provided refresher training at least every three years to assure that each employee involved in operating a process understands and adheres to the current operating procedures of the process as required by 40 C.F.R. § 68.71(b);
 - f) had not ascertained and documented in a record that each employee involved in operating a process has received and understood the training as required by 40 C.F.R. § 68.71(c);
 - g) had not ensured the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations and good engineering practices as required by 40 C.F.R. § 68.73(d)(3);
 - h) had not established and implemented written procedures to manage changes that affect a covered process as required by 40 C.F.R. § 68.75(a); and,
 - i) had not completed compliance audits as required by 40 C.F.R. § 68.79(a).

V. TERMS OF SETTLEMENT

15. In consideration of Respondent's facility service size, its full compliance history, its good faith effort to comply, other factors as justice may require, and upon consideration of the entire record, the parties enter into this CCCA in order to settle the violations for the total settlement amount of Six Thousand Four Hundred and Fifty Dollars (\$6,450). As detailed below, at least this amount (\$6,450) will be expended on independent consulting services to establish the Respondent's compliance with the CAA 112(r) requirements.

VI. CONSENT AGREEMENT

16. Respondent admits the jurisdictional allegations contained herein.
17. Respondent neither admits nor denies the factual allegations stated herein.

18. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this CCCA.
19. This CCCA, upon incorporation into a final order, applies to and is binding on EPA, Respondent. This CCCA contains all terms of the settlement agreed to by the parties.

VII. WORK TO BE PERFORMED

20. Respondent shall perform the following steps to fully comply with the RMP program requirements of 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated at 40 C.F.R. part 68:
 - i. Respondent must identify a qualified third party consultant to be used to address deficiencies in the RMP and its associated implementation program. No later than March 25, 2011, information regarding the consultant will be forwarded to EPA for review.
 - ii. Within 10 days of EPA's approval of the consultant selected by Respondent, all final arrangements will be made so that consultant may begin work outlined below.
 - iii. The selected consultant will evaluate and modify the Respondent's existing RMP to ensure that it meets all the requirements found at 40 C.F.R. part 68. The consultant will work with the Respondent in the development of protocols and procedures to fully implement an adequate RMP program. These steps must be completed no later than 75 days after EPA's approval of the consultant.
 - iv. Within 15 days of completion of all actions identified in subparagraph iii, Respondent shall provide EPA with documentation of the expenditures made to complete the work identified in paragraph iii. All correspondence shall be mailed or emailed to the following address:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: David Cobb, ENF-AT
(Email address: cobb.david@epa.gov)
 - v. The total expenditures for work completed by the consultant shall not be less than Six Thousand Four Hundred and Fifty Dollars (\$6,450).

21. CERTIFICATION OF COMPLIANCE. On or before one hundred eighty days after the date of the Final Order approving this CCCA, CCWTP will submit to EPA a Certification of Compliance, establishing CCWTP's completion of the items described in Paragraph 20.

22. The CERTIFICATION OF COMPLIANCE submitted by CCWTP shall contain the date, printed name, and signature of a CCWTP authorized individual, as well as the following statement:

I certify that I am authorized to verify the completion of work on behalf of Cedar City Wastewater Treatment Plant. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

23. The CERTIFICATION OF COMPLIANCE will be sent or e-mailed to David Cobb at the following address:

David Cobb, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
E-mail: cobb.david@epa.gov

IV. OTHER TERMS

24. Nothing in this CCCA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

25. Failure by Respondent to comply with any term of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

26. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.

27. The undersigned representative CCWTP certifies they are fully authorized to enter into and legally bind CCWTP to the terms and conditions of this CCCA.

28. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

29. Each party shall bear its own costs and attorney fees in connection with this matter.

30. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Office of Enforcement, Compliance, and
Environmental Justice

COMPLAINANT.

Date: March 5, 2011

By:



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

CEDAR CITY WASTEWATER TREATMENT PLANT

RESPONDENT.

Date: February 24, 2011

By:



Printed Name:

Joe Burgess

Title:

Mayor

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT and CONSENT AGREEMENT/FINAL ORDER** in the matter of **CEDAR CITY WASTEWATER TREATMENT PLANT; DOCKET NO.: CAA-08-2011-0006**. The documents were filed with the Regional Hearing Clerk on March 7, 2011.


Further, the undersigned certifies that a true and correct copy of the documents were delivered David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on March 7, 2011.

Darrel Olmstead, Wastewater Superintendent
Cedar City Wastewater Treatment Plant
10 North Main Street
Cedar City, UT 84720

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

March 7, 2011


Tina Artemis
Paralegal/Regional Hearing Clerk

