

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

06 DEC 29 PM 2:49  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF	)	
	)	
City of Kirksville d/b/a	)	
Kirksville Water Treatment Plant	)	Docket No. CAA-07-2007-0011
201 South Franklin Street	)	
Kirksville, Missouri 63501	)	
	)	
Respondent	)	

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

This Administrative Compliance Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency, Region VII (EPA) and by the Respondent, Kirksville Water Treatment Plant, pursuant to Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7413(a)(3)(B), as amended. This Order requires Respondent, Kirksville Water Treatment Plant, to comply with the requirements of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G.

Specifically, EPA Orders Kirksville Water Treatment Plant to upgrade the chlorination system control room and the chlorine storage room to be in compliance with recognized and generally accepted engineering practices, as required by 40 C.F.R. § 68.48(b). All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion may be specified herein. The terms of this Order shall not be modified except by a subsequent written agreement between the parties.

I. Statutory and Regulatory Background

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

2. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Clean Air Act. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

3. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan (RMP) that must be submitted to EPA.

4. Pursuant to Section 112(r)(7) of the Clean Air Act, 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 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3), grants the Administrator the authority to make a finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

## II. Definitions

6. The regulations at 40 C.F.R. § 68.3 define “stationary source” as 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.

7. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

8. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4.

9. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

10. As used herein, the term “day” shall mean calendar day.

III. Factual Background

11. Respondent is the owner and/or operator of a facility located at 2300 Potter Avenue, Kirksville, Missouri (“facility”). The facility owned by Respondent is a treatment plant for the public drinking water for the City of Kirksville.

12. At all times relevant to this Administrative Compliance Order on Consent, Respondent produced, processed, handled or stored chlorine at its facility.

13. EPA inspected the Kirksville Water Treatment Plant on November 9, 2005, to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Kirksville Water Treatment Plant had greater than 2,500 pounds of chlorine in a process at its facility.

IV. Conclusions of Law

14. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

15. Respondent’s facility located at 2300 Potter Avenue, Kirksville, Missouri, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

16. Chlorine is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for chlorine, as listed in 40 C.F.R. § 68.130, Table 1, is 2,500 pounds.

17. On or about November 9, 2005, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68.

18. Kirksville Water Treatment Plant is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

V. Finding of Violation

19. Kirksville Water Treatment Plant failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.48(b). Kirksville Water Treatment Plant's failure to comply with 40 C.F.R. § 68.48(b), is a violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

VI. Compliance Order

20. Based upon the foregoing Finding of Violation, it is hereby ordered and agreed that Respondent, Kirksville Water Treatment Plant, shall comply with the requirements of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G. Specifically, EPA and Respondent Kirksville Water Treatment Plant agree that Respondent shall, as expeditiously as possible, but in no event longer than 240 days of the effective date of this Order, upgrade the chlorination system control room and the chlorine storage room, as specified below, to be in compliance with recognized and generally accepted engineering practices, as required by 40 C.F.R. § 68.48(b).

- a) Modify and correct deficiencies in the chlorination system control room, including, but not limited to:
  - (i) Remove existing door and frame and installation of window;
  - (ii) Remove existing window and install door and frame;
  - (iii) Install new chlorination system controls and associated mechanisms;
  - (iv) Relocate chlorine dioxide equipment;
  - (v) Renovate and relocate existing chlorination system controls as redundant system;
  - (vi) Construct new office space; and
  - (vii) Implement any other improvements to the facility necessary to comply with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.48(b).

In the Matter of  
City of Kirksville d/b/a  
Kirksville Water Treatment Plant

- b) Modify and correct deficiencies in the chlorine storage room, including, but not limited to:
  - (i) Replace existing window;
  - (ii) Remove existing chlorine tank scale and rails;
  - (iii) Raise existing floor by four (4) inches with a concrete cap;
  - (iv) Remove east exterior wooden wall, replacement with concrete block walls;
  - (v) Install new door frame and doors;
  - (vi) Install new chlorine tank scale and trunnions; and
  - (vii) Implement any other improvements to the facility necessary to comply with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.48(b).

21. Respondent shall, upon completion of the upgrades and modifications to the chlorination system control room and the chlorine storage room, submit a Completion Report, as described in paragraph 21 within 345 days of the effective date of this Order which includes the following:

- a) interior and exterior photographs of the chlorination system control room and chlorine storage room;
- b) an itemization of the costs of completing the modifications to the chlorination system control room and chlorine storage room; and
- c) a verification, stating that Respondent has complied with each of the requirements of this Order.

22. All documents required to be submitted to EPA by this Order shall contain the following certification signed by an officer of the Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

In the Matter of  
City of Kirksville d/b/a  
Kirksville Water Treatment Plant

23. The submissions required by paragraph 21 shall be made to:

Sarah Thibos LaBoda  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101;

and

Robert Bryant  
Chemical Risk Information Branch  
United States Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101.

24. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

#### VII. Stipulated Penalties

25. Respondent shall be liable for stipulated penalties in the amounts set forth in subparagraphs (a) and (b) for failure to comply with the requirements of this Order.

a) The following stipulated penalties shall accrue per violation per day for failure to comply with the requirements of paragraph 20 of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 30th day
\$250	31st day and beyond

b) The following stipulated penalties shall accrue per day for failure to submit the completion report as required by paragraph 21 of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 30th day
\$250	31st day and beyond

In the Matter of  
City of Kirksville d/b/a  
Kirksville Water Treatment Plant

26. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

27. The payment of penalties shall not alter in any way Respondent's obligation to comply with the provisions of this Order.

28. All penalties accruing under this section shall be due and payable to the United States within thirty (30) days of Respondent's receipt from EPA of a demand for payment of penalties. All payments to the United States under this section shall be paid by certified or cashier's check made payable to "Treasurer, United States of America" and remitted to:

EPA-Region VII  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

29. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

#### VIII. Potential Liability

30. Section 113(a)(3)(B) of the Clean Air Act grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(r) of the Clean Air Act and the regulations promulgated pursuant thereto.

31. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Under Section 113(a) of the Clean Air Act, the Administrator is authorized to address such a violation as follows:

In the Matter of  
City of Kirksville d/b/a  
Kirksville Water Treatment Plant

- a) Issue an administrative penalty order assessing a civil penalty not to exceed \$32,500 per day of violation;
- b) Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 per day of violation, or both; or
- c) Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the Clean Air Act.

32. Issuance of this Order does not preclude the State of Missouri or EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of the Kirksville Water Treatment Plant to comply with all federal, state and local statutes, regulations and permits.

33. This Order shall become effective on the date that it is signed by the EPA Director of the Air, RCRA and Toxics Division.

34. This Order shall terminate one year from the effective date of this Order.

35. This Order is binding on the Parties signing below.

COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY

By Carol Kather

*For* Carol Kather  
Acting Director  
Air, RCRA and Toxics Division

Date: 12/29/2006

In the Matter of  
City of Kirksville d/b/a  
Kirksville Water Treatment Plant

RESPONDENT:  
CITY OF KIRKSVILLE d/b/a  
KIRKSVILLE WATER TREATMENT PLANT

By Maui E. Macomber

Title City Manager

Date December 22, 2006