



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 01 2010

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brian K. Cowham
Chief Operator
City of Battle Creek, Verona Pumping Station
250 Brigden Drive
Battle Creek, Michigan 49014

Re: **The City of Battle Creek Pumping Station, Battle Creek, Michigan**
Consent Agreement and Final Order.
Docket No. **CAA-05-2010-0035**

Dear Mr. Cowham:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on July 1, 2010. Please pay the civil penalty in the amount of \$11,375.00 in the manner prescribed in paragraphs 27-32 and reference your check with the number BD 2751003A035 and docket number. In addition, please perform the Supplemental Environmental Project as prescribed in paragraphs 33-49.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Peter Felitti, Associate Regional Counsel, at (312) 886-5114. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc: Ian D. Wright, Assistant City Attorney

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U.S. EPA REGION 5
2010 JUL -1 AM 11:16

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2010-0035
)	
The City of Battle Creek)	Proceeding to Assess a Civil Penalty
Pumping Station)	Under Section 113(d) of the Clean Air
Battle Creek, Michigan,)	Act, 42 U.S.C. § 7413(d)
)	
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is the City of Battle Creek – Verona Pumping Station, a public corporation doing business in Michigan.
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 entry of this CAFO and the assessment of the specified civil

penalty, and agrees to comply with 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 the 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. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements.

10. On June 20, 1996, the U.S. EPA promulgated a final rule known as the Risk Management Program (RMP), 40 C.F.R. Part 68, which implements Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). These regulations require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process to develop and implement an RMP that must be submitted to the U.S. EPA.

11. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted 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.

12. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

13. "Stationary source" shall mean 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. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 C.F.R. parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. § 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way as specified in 40 C.F.R. § 68.3; CAA § 112(r)(2)(C).

14. "Threshold quantity" shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended, in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

15. "Regulated substance" shall mean any substance listed pursuant to section 112(r)(3) of the Act as amended. 40 C.F.R. § 68.3.

16. "Process" shall mean 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. 40 C.F.R. § 68.3.

17. Complainant has authority under Section 113 of the Act to pursue civil penalties for

violations of the Section 112(r)(7) regulations found at 40 C.F.R. Part 68.

18. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997, through March 15, 2004; may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004; and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000, for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

21. Respondent is a Michigan public corporation. The Respondent's facility is located at 250 Brigden Drive, Battle Creek Michigan 49104.

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

23. At all times relevant to this CAFO, Respondent operates a municipal water pumping station, located at 250 Brigden Drive, Battle Creek Michigan 49104 (the "Facility").

24. On or about August 26, 2008, representatives of U.S. EPA conducted a Risk Management Program inspection of the Facility.

25. Based on the inspection, U.S. EPA found that Respondent had more than the threshold quantity of 2,500 pounds (lbs.) for the regulated substance chlorine.

26. Based on the inspection, it was noted that Respondent failed to:

- a. use the most recent Census data, or other updated information to estimate the population, as required under 40 C.F.R. § 68.30(c);
- b. identify environmental receptors that would be included in the distance to the endpoint based on a circle with the point of release at the center, as required under 40 C.F.R. §68.33(a);
- c. rely on information provided on local U.S. Geological Survey maps, or on any data source containing U.S.G.S. data to identify environmental receptors, as required under 40 C.F.R. § 68.33(b);
- d. review and update the off-site consequence analyses at least once every five years, as required under 40 C.F.R §68.36(a);
- e. maintain records used to estimate population and environmental receptors potentially affected by a worst case or alternative release scenario, as required under 40 C.F.R. § 68.39(e);
- f. document safe upper and lower limits for such items as temperatures, pressures, flows or compositions, as required under § 68.65(c)(1)(iv);
- g. document an evaluation of the consequences of deviation, as required under 40 C.F.R. § 68.65(c)(1)(v);
- h. document safety systems in its written process safety information, as required under 40 C.F.R. § 68.65(d)(1)(viii);
- i. perform an initial Process Hazard Analysis (PHA) that identifies, evaluates, and controls the hazards involved in the covered process, as required under 40 C.F.R. § 68.67(a);
- j. update and revalidate the PHA by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process, as required under 40 C.F.R. §68.67(f);
- k. develop and implement written operating procedures that addressed temporary

operations, normal shutdown, startup following a turnaround, or after emergency shutdown, operating limits, safety and health considerations, safety systems and their functions, as required under 40 C.F.R. §68.69(a);

- l. certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary, as required under 40 C.F.R. §68.69(c);
- m. certify in writing, in lieu of initial training for those employees already involved in operating a process on June 21, 1999, that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities are specified in operating procedures, as required under 40 C.F.R. §68.71(a)(2);
- n. provide refresher training, that includes operating procedures specific to the facility, at least every three years, or more often if necessary, as required under 40 C.F.R. § 68.71(b);
- o. document in records that each employee involved in operating a process has received and understood the required training, as required under 40 C.F.R. § 68.71(c);
- p. prepare records containing the identify of the employee, the date of training, and the means used to verify that the employee understood the training, as required under 40 C.F.R. §68.71(c);
- q. establish and implement written procedures to maintain on-going integrity of the process equipment, as required under 40 C.F.R. § 68.73(b);
- r. certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed, as required under 40 C.F.R. § 68.79(a);
- s. determine and document an appropriate response to each of the findings of the audit and document that deficiencies have been corrected, as required under 40 C.F.R. § 68.79(d);
- t. consult with employees and their representatives on the conduct and development of PHAs and on the development of the other elements of process safety management in chemical accident prevention provisions, as required under 40 C.F.R. §68.83(b);
- u. obtain and evaluate information regarding contract owner or operator's safety performance and programs when selecting a contractor, as required under 40 C.F.R. §68.87(b)(1);

- v. explain to the contract owner or operator the applicable provisions of the emergency response or the emergency action program, as required under 40 C.F.R. §68.87(b)(3);

Civil Penalty

27. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, prompt return to compliance by the Respondent and an agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$11,375.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$11,375 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

The check must note the case name, docket number of this CAFO and the billing document number.

29. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Monika Chrzaszcz, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section

U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Peter Felitti, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

31. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 32, below and paragraph 44, 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

32. 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 overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

33. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by helping to prevent/reduce the risk of a leak of

chlorine to the environment and help with emergency planning and preparedness.

34. At its Battle Creek- Verona Pumping facility, Respondent must complete the SEP as follows. Within three months from the effective date of this CAFO, Respondent will begin the installation of electronic automatic valve closure system for chlorine containers. This will consist of electric valve actuators, a control panel, an emergency stop button and an uninterrupted power source. Three actuators would be installed: two would be mounted on the two chlorine cylinders in use and one actuator would be used as a spare. One control panel will operate all three actuators. The valve actuator would close upon a leak detection, seismic activity, or manual stoppage. Installation includes mounting boxes and installing wire and conduit. Installation would be completed within six months of the effective date of this CAFO.

35. Respondent must spend at least \$30,000 to design, purchase and install the equipment and \$2,000 per year to operate the equipment for five years. For purposes of paragraph 44, the value of the SEP is \$34,125.

36. Respondent must continuously use or operate the equipment installed as the SEP for at least five year(s) following its installation.

37. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

38. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

39. Respondent must submit a SEP completion report to U.S. EPA within 90 days of the completion of the installation. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP.

40. Respondent must submit all notices and reports required by this CAFO by first class mail to:

Monika Chrzaszcz, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

41. In the report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

42. Following receipt of the SEP completion report described in paragraph 39, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will

seek stipulated penalties under paragraph 44.

43. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 44, below.

44. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less on the SEP than the amount set forth in paragraph 35, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 35.
- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph 44.a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$15,000 in addition to any penalty required under subparagraph 44.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 34 above for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 39 above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	15 th through 30 th day
\$500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until

it achieves compliance with the milestone.

45. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

46. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 28 and 29, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts as specified in paragraph 37..

47. Any public statement that Respondent makes referring to the SEP must include the following language, "The City of Battle Creek undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the City of Battle Creek for violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r)."

48. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for

completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

49. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

51. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

52. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 50 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

53. Respondent certifies that it is complying fully with Section 112(r) of the Act, 42 U.S.C. § 7412(r).

54. This CAFO constitutes an "enforcement response" as that term is used in U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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

56. 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.

57. Each party agrees to bear its own costs and attorneys' fees in this action.

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

City of Battle Creek, Michigan, Respondent

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6/15/10
Date

Kenneth Tsuchiyama
Kenneth Tsuchiyama, City Manager
City of Battle Creek

Form Approved
IDW
City Attorney

United States Environmental Protection Agency, Complainant

6-24-10
Date

Richard Karl
Richard Karl, Director
Superfund Division

U.S. ENVIRONMENTAL
PROTECTION AGENCY
JUL 1 2010
OFFICE OF REGIONAL
COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

City of Battle Creek, Michigan

Docket No.

CAA-05-2010-0035

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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.

6-28-10

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

Certificate of Service


I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Brian K. Cowham
Chief Operator
City of Battle Creek, Verona Pumping Station
250 Brigden Drive
Battle Creek, Michigan 49014

Ian D. Wright
Assistant City Attorney
City of Battle Creek
10 North Division Street
Cuite 207
PO Box 1717
Battle Creek, Michigan 49016-1717

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 1st day of July, 2010.



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

CAA-05-2010-0035
BD# 2751003A035

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