

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 Renner Boulevard  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Fort Dodge, Iowa	)	Docket No. CAA-07-2015-0004
d/b/a John T. Pray Facility	)	
600 Phinney Park Drive	)	ADMINSTRATIVE COMPLIANCE
Fort Dodge, Iowa 50501	)	ORDER ON CONSENT
	)	
Respondent	)	
_____	)	

Preliminary Statement

1. This Administrative Compliance Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and by Respondent, the city of Fort Dodge, Iowa d/b/a John T. Pray Facility (“Respondent”), pursuant to Section 113(a)(3)(B) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(B), as amended.

2. This Order requires Respondent to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, EPA orders Respondent to develop and implement a Risk Management Program and submit a Risk Management Plan for its water treatment plant, located at 600 Phinney Park Drive, Fort Dodge, Iowa 50501. 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.

3. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

### Regulatory Background

4. 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 CAA, 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).

5. 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 CAA. 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.

6. 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. Within the state of Iowa this process is subject to the OSHA process safety management standard, 29 CFR 1910.119, and is, therefore subject to Program 3 requirements, as set forth in 40 C.F.R. 68.10(d)(2).

7. 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.

8. Section 113(a)(3) of the CAA, 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.

### Definitions

9. 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.

10. 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 CAA, 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.

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

12. 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.

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

#### Factual Background

14. Respondent is the owner and/or operator of a public water treatment facility that uses chlorine in its water treatment process. The amount of chlorine on hand at the facility is up to 9,000 pounds. The facility is located at 600 Phinney Park Drive, Fort Dodge, Iowa.

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

16. On or about August 27-28, 2013, EPA conducted an inspection of Respondent’s facility to determine compliance with the Emergency Planning and Community Right-to-Know Act (“EPCRA”), the release reporting provisions of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), and Section 112(r) of the CAA and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that Respondent had greater than 2,500 pounds of chlorine in a process at the Respondent’s facility.

#### Conclusions of Law

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

18. Respondent’s facility described in Paragraph 14 is a “stationary source” pursuant to 40 C.F.R. § 68.3.

19. 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.

20. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, 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.

### Finding of Violations

21. Respondent's Facility failed to develop a management system to oversee the implementation of the risk management program elements, assign a qualified person or position that has overall responsibility for the RMP, and document persons or positions, other than the qualified individual, who have been assigned responsibilities for implementing elements per 40 CFR 68.15(a-c).

22. Respondent's Facility failed to review and update the offsite consequence analyses at least once every five years per 40 CFR 68.36(a).

23. Respondent's Facility failed to maintain the records for the offsite consequences analyses per 40 CFR 68.39(a-e).

24. Respondent's Facility failed to compile written process safety information pertaining to the technology of the process that included process chemistry, consequences of deviation per 40 CFR 68.65(c)(1)(ii & v), and information pertaining to the equipment in the process that included documentation that the equipment complies with recognized and generally accepted good engineering practices per 40 CFR 68.65(d)(2).

25. Respondent's Facility failed to establish a system to promptly address the process hazard analysis team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations or actions per 40 CFR 68.67(e).

26. Respondent's Facility failed to update and revalidate the initial process hazard analysis at least every five years after its completion by a team meeting the requirements in §68.67(d) to assure that the process hazard analysis is consistent with the current process per 40 CFR 68.67(f).

27. Respondent's Facility failed to retain all PHAs and updates as well as resolutions for the life of the process per 40 CFR 68.67(g).

28. Respondent's Facility failed to develop and implement written operating procedures that provided clear instructions for safely conducting activities involved in the covered process that addressed each operating phase, operating limits, safety and health considerations, and safety systems per 40 CFR 68.69(a)(1-4).

29. Respondent's Facility failed to certify annually that the operating procedures are current and accurate per 40 CFR 68.69(c).

30. Respondent's Facility failed to develop and implement safe works practices to provide for opening process equipment or piping and control over entrance into a stationary source by maintenance, contractors, laboratory, or other support personnel per 40 CFR 68.69(d).

31. Respondent's Water Treatment Plant failed to provide refresher training at least every three years, and prepare a record which contains the identity of the employee, the date of training and the means used to verify that the employee understood the training per 40 CFR 68.71(b-c).

32. Respondent's Facility failed to establish and implement written procedures to maintain the ongoing integrity of process equipment per 40 CFR 68.73(b).

33. Respondent's Facility failed to document each inspection and test that has been performed on process equipment. The documentation did not identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the test or inspection was performed, a description of the test or inspection and the results of the inspection or test per 40 CFR 68.73(d)(4).

34. Respondent's Facility failed to assure that the construction of new plants and equipment, as it is fabricated, is suitable for the process application for which they will be used. There was also a failure to perform appropriate checks and inspections to assure that equipment was installed properly and consistent with design specifications and the manufacturer's instructions per 40 CFR 68.73(f)(1&2).

35. Respondent's Facility failed to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process and other elements of 40 CFR 68.75(a-e).

36. Respondent's Facility failed to perform a pre-startup safety review for modified stationary sources when the modification was significant enough to require a change in the process safety information and other elements of 40 CFR 68.77(a-b).

37. Respondent's Facility failed to certify they have evaluated compliance with the provisions of Subpart D at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed. They also failed to have an audit conducted by at least one person knowledgeable in the process; develop a report of the findings; promptly determine and document an appropriate response to the findings; document that deficiencies have been corrected and retain the two most recent compliance audit reports per 40 CFR 68.79(a-e).

38. Respondent's Facility failed to prepare an investigation report at the conclusion of an incident investigation that included at a minimum the date of the incident, date investigation began, description of the incident, factors that contributed to the incident and any recommendations resulting from the investigation. They also failed to establish a system to promptly address and resolved any incident report findings; document any resolutions and

corrective actions; review the report with all affected personnel and retain any reports for five years per 40 CFR 68.81(d-g).

39. Respondent's Facility failed to develop a written plan of action regarding the implementation of the employee participation required per 40 CFR 68.83(a).

40. Respondent's Facility failed to issue hot work permits for such work near covered processes per 40 CFR 68.85(a).

41. Respondent's Facility failed to develop and implement safe work practices consistent with §68.69(d) to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas per 40 CFR 68.87(b)(4).

42. Respondent's Facility failed to provide an executive summary in the RMP that included a brief description of planned changes to improve safety per 40 CFR 68.155(f).

43. Respondent's Facility failed to review and update the RMP at least once every five years from the date of its initial submission or most recent update required by §68.190(b)(2-7) per 40 CFR 68.190(b)(1).

#### Compliance Order

44. Based upon the foregoing Finding of Violation, it is hereby ordered and agreed that Respondent shall comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated there under and codified at 40 C.F.R. Part 68. Specifically, EPA and Respondent agree that Respondent shall, as expeditiously as possible, but in no event later than July 31, 2015, complete the following compliance action: Respondent must develop a Risk Management Program that complies with the Program level 3, as set out in the eligibility requirements in 40 C.F.R. § 68.10; submit an RMP to the EPA RMP Reporting Center by May 30, 2015 that includes the information required by 40 C.F.R. §§ 68.155 through 68.185 for each covered facility; and maintain records supporting the implementation of the Risk Management Program in accordance with 40 C.F.R. § 68.200.

45. Any construction or facility modifications required to be implemented under Paragraph 44 shall be completed by November 30, 2015.

46. Every 30 days, from the effective date of this Order until the termination of this Order, Respondent shall provide a progress report to EPA detailing the actions Respondent has taken in furtherance of its obligations under this Order. Upon completion of each milestone detailed in Paragraphs 44, 45 and 47 of this Order, Respondent shall provide verification in the monthly progress report that the requirement is being satisfied. The first progress report shall be due no later than 30 days after the effective date of this Order. Each subsequent progress report shall be due every 30 days thereafter.



47. Respondent shall submit documentation showing completion of the actions required by Paragraph 44 as well documentation showing findings of violation in paragraphs 21-43 have been addressed as follows:

- (a) Upon completion of the development and implementation of Risk Management Plans described in Paragraphs 44 and 47, Respondent shall submit, within 30 days of receipt, a copy of the confirmation email received by Respondent showing that the RMP has been accepted at the EPA RMP Reporting Center.
- (b) Respondent shall submit a Completion Report to EPA within 30 days of completing all of the actions required by Paragraphs 44 and 47.

48. 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. (Signature)

49. The submissions required by Paragraphs 44, 46, and 47 shall be made to:

Raymond C. Bosch  
Assistant Regional Counsel  
United States Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and to

George Hess  
Chemical Risk Information Branch  
United States Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

50. 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.

Stipulated Penalties

51. 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 come into compliance and to comply with the requirements of Paragraph 44 thru 47 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

52. 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.

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

54. All penalties accruing under this section shall be due and payable to the United States within 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:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

55. 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 three percent (3%) per annum.

Potential Liability

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

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

- a) Issue an administrative penalty order assessing a civil penalty not to exceed \$37,500 per day of violation;



- b) Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$37,500 per day of violation, or both; or
- c) Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA.

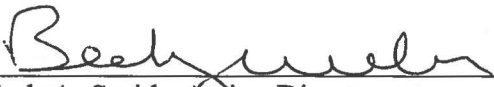
58. Issuance of this Order does not preclude EPA or any state from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Respondent to comply with all federal, state and local statutes, regulations and permits.

59. This Order shall become effective on the date that it is signed by the EPA Director of the Waste and Chemical Enforcement Division of the Office of Enforcement and Compliance Assurance.

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

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

COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY

By   
~~Mark A. Smith, Acting Director~~  
Air and Waste Management Division  
U.S. EPA Region 7

Date 1/7/15

RESPONDENT:  
FORT DODGE, IOWA

By 

Title City Manager

Date 12 / 11 / 2014

IN THE MATTER OF Fort Dodge, Iowa d/b/a John T. Pray Facility, Respondent  
Docket No. CAA-07-2015-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

[bosch.raymond@epa.gov](mailto:bosch.raymond@epa.gov)

Copy by First Class Mail to:

Tony Trotter, P.E.  
City Engineering Department  
City of Fort Dodge  
819 First Avenue South  
Fort Dodge, Iowa 50501

Dated: 1/9/15



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7