

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

2008 APR 11 PM 3:16

<b>In the Matter of:</b>	)	<b>Proceeding to Assess a</b>
	)	<b>Civil Penalty under Section</b>
<b>City of St. Charles, A Municipal</b>	)	<b>113(d) of the Clean Air Act,</b>
<b>Corporation, Operating As --</b>	)	<b>42 U.S.C. § 7413(d)</b>
<b>Saint Charles Wastewater</b>	)	
<b>Treatment Facility</b>	)	
<b>1404 S. Seventh Ave.</b>	)	
<b>St. Charles, Illinois 60174</b>	)	
	)	
<b>Respondent</b>	)	
<hr/>	)	<b>Docket No. CAA-05-2008-0003</b>

**SECOND AMENDED ADMINISTRATIVE COMPLAINT**

1. This is an Administrative Complaint issued by the Administrator of the United States Environmental Protection Agency ("U.S. EPA") under Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and pursuant to 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("the Administrator Rules"), 64 Fed. Reg. 40137 (July 23, 1999), codified at 40 C.F.R. Part 22 (July 1, 2006).

2. The Director of the Superfund Division, U.S. EPA, Region 5, is, by lawful delegation, the Complainant in this matter.

3. The City of St. Charles, Illinois, a municipal corporation, operating as the St. Charles Wastewater Treatment Facility, is the Respondent in this matter.

**STATUTORY AND REGULATORY BACKGROUND**

4. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the

accidental release, and to minimize the consequences of any such release, of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance.

5. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

6. Section 112(r)(7)(A) of the CAA, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

7. Section 112(r)(7)(B)(i) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

8. Section 112(r)(7)(B)(ii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such

substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

9. Pursuant to authority under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have been codified, as amended, at 40 C.F.R. § 68.130.

10. Pursuant to authority under Section 112(r) of the CAA, 42 U.S.C. §7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which have since been codified, and amended, at 40 C.F.R. Part 68 - Chemical Accident Prevention Provisions.

11. In November 2006, pursuant to authority under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and U.S. Attorney General jointly determined that administrative penalty actions were an appropriate remedy for all violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), not otherwise precluded by any statute of limitations.

### **GENERAL ALLEGATIONS**

12. That Respondent is a “person,” as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

13. That Respondent owns and operates a wastewater treatment facility, located at 1405 South Seventh Avenue, St. Charles, Illinois, which facility consists of buildings and operating equipment (“the Facility”).

14. That in June 1999, pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA a Risk Management Plan.

15. That in the Risk Management Plan submitted to U.S. EPA, Respondent admitted the following:

- (1) that the Facility fell within NAICS Code 22132, as a Sewage Treatment Facility;
- (2) that it used "1943 chlorine," CAS No. 7782-50-5, as a process chemical during its operations;
- (3) that, at the time it submitted its Risk Management Plan, it held at its facility 4,000 lbs. of "1943 chlorine," CAS No. 7782-50-5.

16. That on August 31, 2004, an authorized representative of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.

17. That during the course of inspection, Respondent held at the Facility 12,840 lbs of "1943 chlorine," CAS No. 7782-50-5.

18. That pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator has listed chlorine (CAS No. 7782-50-5) as a substances regulated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), identifying a threshold quantity of 2,500 lbs. of chlorine (CAS No. 7782-50-5) as causing regulations promulgated thereunder to be applicable. 40 C.F.R. § 68.130, Table 1.

19. That the Administrator has defined "stationary source" to mean "any buildings, structures, equipment, installations, or substances 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.” 40 C.F.R. § 68.3.

20. That the Facility is a “stationary source” as defined at 40 C.F.R § 68.3.

21. That 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

22. That the Administrator has defined “process” to 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.” 40 C.F.R. § 68.3.

23. That in June 1999, having held for use in its operations at the Facility 4,000 lbs. of “1943 chlorine” (CAS No. 7782-50-5), see Paragraph 15, and in August 2004, having held for use in its operations at the Facility 12,840 lbs. of “1943 chlorine” (CAS No. 7782-50-5), see Paragraph 17, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 C.F.R. Part 68.

24. That pursuant to the compliance schedule identified at 40 C.F.R. § 68.10, Respondent was required to comply with the requirements of 40 C.F.R. Part 68 no later than June 21, 1999.

25. That for purposes of complying with the requirements of 40 C.F.R. Part 68, in addition to meeting the general requirements, identified at 40 C.F.R. § 68.12(a), Respondent was required to meet Program 2 eligibility requirements, identified at 40 C.F.R. § 68.12(c). See 40 C.F.R. § 68.10(c).

**STATEMENT OF VIOLATIONS****Count I**

26. That Paragraphs 1 through 25 of this Complaint are incorporated herein by reference.

27. That 40 C.F.R. § 68.12(a) provides that the owner or operator of a stationary source subject to 40 C.F.R, Part 68, shall submit a single Risk Management Plan, as provided in 40 C.F.R. §§ 68.150 to 68.185.

28. That 40 C.F.R. § 68.150 provides that, in addition to submitting an initial Risk Management Plan, as Respondent did in June 1999, see Paragraph 14, owners or operators must submit to U.S. EPA updated Risk Management Plans in accordance with 40 C.F.R. §§ 68.190 and 68.195.

29. That 40 C.F.R. § 68.190(b)(1) requires that an owner or operator of a stationary source shall revise and update its Risk Management Plan submitted under 40 C.F.R. § 68.150 at least once every five years from the date of its initial submission or most recent update.

30. That between the submission of its Risk Management Plan to U.S. EPA in June 1999, and the August 2004 U.S. EPA inspection, Respondent failed to review and update its Risk Management Plan and submit it to U.S. EPA.

31. That in failing to review and update its Risk Management Plan and submit it to U.S. EPA, as set forth at Paragraph 30, Respondent violated 40 C.F.R. § 68.190, and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**Count II**

32. That Paragraph 1 through 31 of this Complaint are herein incorporated by reference.

33. That 40 C.F.R. § 68.12(c)(2) provides that owners or operators meeting Program 2 requirements must conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42.

34. That in the Risk Management Plan it submitted to U.S. EPA in June 1999, identified here at Paragraph 16, Respondent included its “offsite consequences analyses” in conformance with parameters set forth at 40 C.F.R. § 68.22.

35. That 40 C.F.R. § 68.36 provides that the owner or operator subject to the requirements of 40 C.F.R. Part 36 shall review and update its “offsite consequence analyses” at least once every five years.

36. That at the time of U.S. EPA’s inspection in August 2004, Respondent had not reviewed and updated its “offsite consequences analyses.”

37. That Respondent’s failure to review and update its “offsite consequence analyses” within the required time-frame of 40 C.F.R. § 68.36, as set forth in Paragraph 36, is a violation of 40 C.F.R. § 68.36, and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**Count III**

38. That Paragraph 1 through 37 of this Complaint are herein incorporated by reference.

39. That 40 C.F.R. § 68.39(a) requires that an owner or operator shall maintain certain records related to its offsite consequences analyses, identified therein.

40. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce records documenting the preparation of its "offsite consequences analyses," as identified at 40 C.F.R. § 68.39(a).

41. That Respondent's failure to maintain records documenting the preparation of its "offsite consequences analyses," as set forth in Paragraph 40, is a violation of 40 C.F.R. § 68.39(a), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

#### **Count IV**

42. That Paragraph 1 through 41 of this Complaint are incorporated herein by reference.

43. That 40 C.F.R. § 68.15(a), in part, provides that the owner or operator of a stationary source with processes subject to Program 2 requirements shall develop a management system to oversee the implementation of the risk management program elements.

44. That 40 C.F.R. § 68.15(b) provides that the subject owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

45. That 40 C.F.R. § 68.15(c) requires that, when responsibility for implementing individual requirements of 40 CFR Part 68 is assigned to persons other than the person identified under 40 C.F.R. § 68.15(b), the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.



46. That Respondent developed a management system to oversee the implementation of the risk management program elements, and assigned to one Clifford White the overall responsibility for the development, implementation, and integration for the risk management program elements

47. That Respondent assigned persons other than Clifford White responsibility for implementing individual requirements of 40 CFR Part 68, but, at the time of the inspection, identified in Paragraph 16, Respondent did not have any documentation of lines of authority for these responsibilities either in an organization chart, or a similar document.

48. That Respondent's failure to document lines of authority among its employees assigned responsibility for implementing requirements of 40 CFR Part 68, as set forth in Paragraph 47, is a violation of 40 C.F.R. § 68.15(c), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

#### Count V

49. That Paragraphs 1 through 48 of this Complaint are herein incorporated by reference.

50. That 40 C.F.R. § 68.12(c)(3) provides that owners or operators must meet Program 2 prevention steps provided in 40 C.F.R. §§ 68.48 through 68.60, or implement Program 3 prevention steps provided in §§ 68.65 through 68.87.

51. That 40 C.F.R. § 68.48(a) requires, in part, that an owner or operator shall maintain certain up-to-date safety information related to the regulated substances, processes, and equipment at its facility, including:

- maximum intended inventory of equipment in which the regulated substances are stored or processed, § 68.48(a)(2);
- safe upper and lower temperatures, pressure, flows, and compositions, § 68.48(a)(3); and
- equipment and specifications. § 68.48(a)(4).

52. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce any safety information records as identified in Paragraph 51.

53. That Respondent's failure to maintain safety information records, as set forth in Paragraph 52, is a violation of 40 C.F.R. § 68.48(a), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

#### **Count VI**

54. That Paragraphs 1 through 53 of this Complaint are herein incorporated by reference.

55. That 40 C.F.R. § 68.50(a) requires that an owner or operator shall conduct a review of the hazards associated with its regulated substances, process, and procedures, identifying circumstances specifically identified at 40 C.F.R. § 68.50(a)(1)-(4).

56. That 40 C.F.R. § 68.50(c) provides, in part, that the owner or operator shall document the results of the review required by 40 C.F.R. § 68.50(a).

57. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce records documenting that it had ever prepared any review of the hazards associated with its "1943 chlorine," CAS No. 7782-50-5, and its process and procedures.

58. That Respondent's failure to maintain records documenting the preparation of the required hazard review, as set forth in Paragraph 57, is a violation of 40 C.F.R. § 68.50(c), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

#### **Count VII**

59. That Paragraph 1 through 58 of this Complaint are herein incorporated by reference.

60. That 40 C.F.R. § 68.52(a) requires that an owner or operator shall prepare written operating procedures, in conformance with 40 C.F.R. § 68.52(b), that provide clear instructions or steps for safely conducting activities associated with each governed process, consistent with safety information for each process.

61. That, in preparing the written procedures required by 40 C.F.R. § 68.52(a), an owner or operator must address, in part, the following: initial operations; normal operations; temporary operations; emergency shutdown and operations; normal shutdown; startup following a normal or emergency shutdown or a major change that requires a hazards review; consequences of deviations and steps required to correct or avoid deviations; and equipment inspections. 40 C.F.R. § 68.52(b).

62. That at the time of U.S. EPA's inspection of August 2004, Respondent could not produce written operating procedures which addressed the following: normal operations; temporary operations; emergency shutdown and operations; and normal shutdown; startup following a normal or emergency shutdown or a major change that requires a hazards review;

consequences of deviations and steps required to correct or avoid deviations; and equipment inspections.

63. That Respondent's failure to prepare and maintain complete written operating procedures, as set forth at Paragraph 62, is a violation of 40 C.F.R. § 68.52(a), and consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

### **Count VIII**

64. That Paragraphs 1 through 63 of this Complaint are herein incorporated by reference.

65. That 40 C.F.R. § 68.58(a) requires that an owner or operator shall certify that it has evaluated compliance with the provisions of 40 CFR Part 68, subpart C (40 C.F.R. §§ 68.48 - 40 CFR 68.60), at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

66. That at the time of U.S. EPA's inspection in August 2004, Respondent could not produce certification of every having conducted a compliance audit as required by 40 C.F.R. § 68.58.

67. That in failing to certify that, at any time between June 1999 and August 2004, it conducted a compliance audit in conformance with 40 C.F.R. § 68.58, as set forth at Paragraph 66, Respondent violated 40 C.F.R. § 68.58, and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**Count IX**

68. That Paragraphs 1 through 67 of this Complaint are herein incorporated by reference.

69. That 40 C.F.R. § 68.190(c) provides that if a stationary source is no longer subject to 40 C.F.R. Part 68 - Chemical Action Prevention Provisions, the owner or operator shall submit a de-registration to U.S. EPA within six months indicating that the stationary source is no longer covered.

70. That in Paragraph 30 of Respondent's Answer to Administrative Complaint, Respondent asserts that, "prior to August 2004," it made certain submissions to the Illinois Environmental Protection Agency, which included:

a facility plan, a construction loan application, and a construction permit application for the installation of an ultraviolet disinfection system as a replacement fore Respondent's day-to-day chlorine disinfection system. . . . Respondent is without knowledge of whether or not this information was provided to the U.S. EPA.

71. That in Respondent's Answer to Administrative Complaint, at p.22, Respondent asserts the following:

Respondent has eliminated the use of chlorine as disinfectant for its main treatment plant except for the treatment of its excess flow discharge. Respondent has replaced its chlorine disinfection system with an ultraviolet disinfection system. Additionally, Respondent has converted the excess flow discharge disinfection treatment to small cylinders and therefore, Respondent's facility is below the threshold provided in the requirements of Section 112(r) of the Clean Air Act.

72. That at no time has Respondent submitted to U.S. EPA a de-registration, informing U.S. EPA that it was no longer required to comply with 40 C.F.R. Part 68 - Chemical Accident Prevention Provisions, and Section 112(r) of the CAA.

73. That in failing to de-register by informing U.S. EPA that it was no longer required to comply with 40 C.F.R. Part 68 - Chemical Accident Prevention Provisions, and Section 112(r) of the CAA, as set forth at Paragraph 71, Respondent violated 40 C.F.R. § 68.190(c), and, consequently, Respondent is liable for a civil penalty to be assessed by the Administrator, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

#### **Proposed Penalty Amounts**

Section 113(d) of the CAA, 42 U.S.C. § 7413, provides in part, that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Title I of the CAA (42 U.S.C. §§ 7401-7449). Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Part 19 and 27, see 61 Fed. Reg. 69360-69366 (Dec. 31, 1996) and 62 Fed. Reg. 13514-13517 (March 20, 1997), this civil penalty amount was increased to \$27,500 for each such violation occurring from January 31, 1997 to March 15, 2004, and to \$32,000 for each such violation occurring after March 15, 2004.

Section 113(e) of the CAA, 42 U.S.C. § 7413(e), provides that, in determining an appropriate amount of penalty, the Administrator, is to consider, in addition to such other factors as justice may require, the size of the business; the economic impact of the penalty on the business; the violators full compliance history and good faith efforts to comply; the duration of the violation as established by an credible evidence (including evidence other than the applicable test

method); payment by the violator of penalties previously assessed for the same violation; the economic benefit of noncompliance; and the seriousness of the violation.

On delegated authority from the Administrator, Complainant proposes that a **civil penalty of \$46,000** be assessed against Respondent for its violation of the CAA alleged in this Complaint.

Complainant has determined the amount of proposed civil penalty based upon an analysis of relevant evidence now known to the Complainant, in consideration of the penalty criteria identified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d). The analysis incorporated the Administrator's adopted policy, the "Combined Enforcement Policy of §112(r) of the Clean Air Act" (August 15, 2001).

In considering the "economic impact of the proposed \$46,000 penalty on Respondent, Complainant has presumed that Respondent does have an ability to pay the penalty amount. However, should Respondent make available to Complainant relevant and credible financial records which demonstrate that it does not have an ability to pay the amount of penalty proposed, Complainant will set aside the presumption and reduce the amount of penalty proposed, consistent with what is revealed in Respondent's financial records. Likewise, should Respondent provide Complainant credible information relevant to any other issue regarding the appropriate amount of penalty, on review of that information Complainant will amend the amount of penalty proposed if, and as, warranted.

Respondent may pay the proposed \$46,000 penalty for the CAA violations alleged in this Complaint by sending a certified or cashier's check, payable to the Treasurer, United States of America," to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must reference **the name and docket number** of this Complaint. Respondent must send copies of the check to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Monika Chrzaszcz  
Chemical Emergency Preparedness  
& Prevention Section (SC-6J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Richard R. Wagner  
Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Congress has provided that prior to assessing a civil penalty under Section 113 of the CAA, 42 U.S.C. § 7413, the Administrator must provide to the alleged violator notice of the proposed penalty order, and opportunity for a hearing on the record in accordance with Sections 554 and 556 of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 554 and 556. Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A). Consequently, you have the right to request a hearing to challenge the facts alleged in the Complaint and the amount of civil penalty to be assessed, as proposed in the Complaint.



Any pre-hearing matter and hearing that may occur will be governed in accordance with the provisions of Section 554 and 556 of the APA, 5 U.S.C. §§ 554 and 556, and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits,” 40 C.F.R. Part 22 (July 1, 2006) (“the Administrator’s Rules”). A copy of the Administrator’s Rules accompanies this Complaint.

**If you wish to avoid being found in default, you must file a written Answer** to the Complaint with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) days of your receipt service of this Complaint. 40 C.F.R. §22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal holiday. 40 C.F.R. § 22.7(a).

**Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which you have any knowledge, or, where you have no knowledge of a particular factual allegations, so state. 40 C.F.R.**

**22.15(b). Your answer must also state:**

- 1. The circumstances or arguments that you allege constitute the grounds of defense;**
  - 2. The facts that you dispute;**
  - 3. The basis on which you dispute the proposed relief, that being the amount of penalty, proposed; and**
  - 4. Whether you request a hearing.**
-

**40 C.F.R. 22.15(b).**

**Your failure to admit, deny or explain any material factual allegation in the Compliant will constitute an admission of the allegation. 40 C.F.R. § 22.15(d). You should further note that the Administrator's Rules provide that any hearing that shall be held will be a hearing upon the issues raised by the complaint and answer. 40 C.F.R. 22.15(c).**

A copy of the Answer, and any subsequent documents filed by you in this action, should be sent to Richard R. Wagner, Senior Attorney, Office of Regional Counsel (C-29A), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Mr. Wagner may be telephoned at (312) 886-7947.

Notwithstanding any request you may make for a hearing, if you fail to file an Answer within thirty (30) days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. 40 C.F.R. § 22.15(a); 40 C.F.R. § 22.17. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing on those factual allegations. Any civil penalty determined appropriate in the Default Order shall then become due and payable, without further proceedings, on becoming a final order under 40 C.F.R. § 22.27(c). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15.00 after thirty (30) days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any

principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

***SETTLEMENT CONFERENCE***

You may request an informal conference to discuss this case with representatives of the Administrator, and explore settlement of the case. To request such a conference, please contact Monika Chrzaszcz, Chemical Emergency Preparedness and Prevention Section (SC-6J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. She can be reached by phone, during working hours, at (312) 886-0181. Your request for an informal settlement conference does not extend the 30 day period within which you must submit a written Answer and Request for Hearing. You may request and participate in a conference notwithstanding your filing an Answer and request for a hearing. While you are encouraged to request, and participate in such a conference, EPA will not reduce the penalty simply because the parties hold an informal settlement conference.

Date: \_\_\_\_\_

4/11/08



Richard C. Karl, Director  
Superfund Division  
U.S. EPA, Region 5



IN THE MATTER OF: St. Charles Wastewater Treatment Facility  
St. Charles, Illinois  
Docket No. CAA-05-2008-0003


**CERTIFICATE OF SERVICE**

I certify that I filed one original and one copy of the attached Second Amended Administrative Complaint and Notice of Opportunity to Request a Hearing this day with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I sent a copy to the Presiding Officer, and Respondent's counsel, via Certified Mail, Return Receipt Requested, as follows:

Honorable Susan L. Biro, Chief ALJ  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mailcode: 1900L  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Roy M. Harsch  
Drinker Biddle Gardner Carton, LLP  
191 N. Wacker Dr., Suite 3700  
Chicago, Illinois 60606-1698

Date: 11 April 2008

  
\_\_\_\_\_  
Donald Ayres  
Paralegal  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd. (C-14J)  
Chicago, Illinois 60604

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