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EPA REGION 6

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

In the Matter of	§	
	§	
Brushy Creek Regional Wastewater System	§	Docket No. <u>CAA 06-2025-3334</u>
- East	§	
Round Rock, Texas	§	
	§	
Respondent.		

ADMINISTRATIVE ORDER ON CONSENT

A. PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent ("Order") is brought under Section 113(a) of the Clean Air Act (the "CAA" or the "Act"), 42 U.S.C. § 7413(a). Section 113(a)(3)(B) of the CAA authorizes the Administrator of the United States Environmental Protection Agency to issue an order requiring compliance to any person the Administrator finds to have violated, or is in violation of the CAA, which includes, among other things, the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder.

2. Complainant is the United States Environmental Protection Agency, Region 6 ("EPA"). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 6 has been delegated the authority to settle civil administrative penalty and compliance proceedings under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

3. Brushy Creek Regional Wastewater System - East ("Brushy Creek - East" or "Respondent") is a municipality in the State of Texas. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent have agreed to voluntarily enter into this Order for the purposes of carrying out the goals of Section 112(r) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

B. JURISDICTION

5. This Order is entered into pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B) for the alleged violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder.

C. STATUTORY AND REGULATORY BACKGROUND

Clean Air Act, Section 112(r)

6. The objective of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

7. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate, not later than 24 months after November 15, 1990, a list of regulated 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

8. Pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

9. Pursuant to Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), whenever the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, the Administrator may issue an administrative order against any person assessing a civil administrative penalty.

10. The Administrator may assess a civil penalty of up to \$59,114 per day of violation up to a total of \$472,901 for each violation. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Risk Management Plan (RMP)

11. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

12. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other

things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to EPA.

13. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 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.

14. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes.

15. Pursuant to 40 C.F.R. § 68.10(h), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(g) and (i), respectively.

Definitions

16. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

17. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

18. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, 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.

19. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation 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.

20. The regulation at 40 C.F.R. § 68.3 defines “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 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

21. The regulation at 40 C.F.R. § 68.3 defines “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.

22. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

23. 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).

24. Respondent is the owner and operator of the facility located at 3939 East Palm Valley Blvd., Round Rock, Texas 78664 (the “Facility”).

25. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, EPA conducted an investigation of the Facility on April 22, 2025, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Investigation”).

26. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

27. The Respondent has a sewage treatment facilities process at the Facility, meeting the definition of “process”, as defined by 40 C.F.R. § 68.3.

28. Chlorine (anhydrous) is a “regulated substance” pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for chlorine (anhydrous), as listed in 40 C.F.R. § 68.130 is 2,500 pounds.

29. Respondent has greater than a threshold quantity of 2,500 pounds, in a process at the Facility, meeting the definition of “covered process” as defined by 40 C.F.R. § 68.3.

30. Sulfur dioxide (anhydrous) is a “regulated substance” pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for sulfur dioxide (anhydrous), as listed in 40 C.F.R. § 68.130 is 5,000 pounds.

31. Respondent has greater than a threshold quantity of 5,000 pounds, in a process at the Facility, meeting the definition of “covered process” as defined by 40 C.F.R. § 68.3.

32. On October 5, 2024, EPA RMP Reporting Center sent a letter to Respondent, notifying Respondent of its failure to update the RMP on file with EPA for the Facility.

33. Respondent is required to submit an RMP at least once every five years from the date of its initial submission or most recent update pursuant to 40 C.F.R. § 68.190(b)(1) and to comply with the Program 2 prevention requirements because pursuant to 40 C.F.R. § 68.10(h), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(g) and (i), respectively.

34. If the Facility is no longer covered by Part 68, the Respondent is required to submit a de-registration to EPA within six (6) months indicating that the stationary source is no longer covered pursuant to 40 C.F.R. § 68.190(c).

35. Based on the information provided by the Respondent, as of November 2, 2023, the Facility no longer has chlorine and sulfur dioxide above the applicable threshold quantities onsite.

E. ALLEGED VIOLATION

36. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

37. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as stated below.

Count 1 – Updates

38. The regulation at 40 C.F.R. § 68.190(c) requires that if a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to EPA within six (6) months indicating that the stationary source is no longer covered.

39. Respondent failed to submit a de-registration for the Facility within six (6) months of no longer being covered under 40 C.F.R. Part 68.

40. Respondent's failure to submit a de-registration within six (6) months of no longer being covered pursuant to 40 C.F.R. § 68.190(c), as required, is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

F. ORDER FOR COMPLIANCE

41. Based on the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, Respondent is hereby ORDERED and agrees 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 and Respondent agree that Respondent shall, as expeditiously as possible, but in no event later than thirty (30) calendar days from the Effective Date of this Order, complete the following actions (Compliance Actions).

- a. De-register the Facility in Central Data Exchange (CDX) in accordance with 40 C.F.R. § 68.190(c).
- b. Notify EPA by electronic mail at spillman.michael@epa.gov when the Facility has been de-registered in CDX.

Submissions

42. Respondent must provide documentation of completion of the compliance actions described above to EPA within thirty (30) calendar days of the Effective Date of this Order. All documentation shall be submitted as set forth in this sub-section.

43. All submissions to EPA required by this Order shall contain the following certification signed by an authorized representative of 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.

44. All submissions to EPA required by this Order shall be sent by electronic mail to:

Patrick Spillman
spillman.michael@epa.gov

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

46. EPA reserves the right to pursue enforcement of any violation identified as a result of Paragraphs 41 through 42 (Compliance Actions).

Additional Terms

47. By signing this Consent Order, Respondent acknowledges that this Order will be available to the public and agrees that this Order does not contain any confidential business information.

48. 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, (3) consents to service by email at the following valid email addresses: spillman.michael@epa.gov (for EPA) and

jheaps@roundrocktexas.gov (for Respondent), and (4) consents to be bound by the requirements set forth herein.

49. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that 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 Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

G. GENERAL PROVISIONS

50. Respondent neither admits nor denies any of the factual or legal determinations made by EPA in this Order.

51. The provisions of this Order shall apply and be binding upon Respondent and its agents, officers, directors, employees, trustees, authorized representatives, successors, and assigns. Respondent shall ensure that any agents, officers, directors, employees, contractors, consultants, firms or other persons or entities acting under or for Respondent with respect to matters included herein comply with the terms of this Order. From the Effective Date until termination of this Order, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless EPA has provided written approval of the release of said obligations or liabilities.

52. This Order does not resolve any civil or criminal claims for the violation alleged in this Order. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude EPA from assessing penalties, obtaining injunctive relief, or taking any other action authorized under the CAA, or other applicable federal laws or regulation. This Order does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

53. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

54. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect the Facility, and/or to request additional information from Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

55. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Order for Compliance is restitution, remediation, or required to come into compliance with the law.

56. Respondent and EPA agree to bear their respective costs and attorney's fees. Respondent waives its right to seek reimbursement of their costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated thereunder.

57. By signing this Order, the undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order, and to execute and legally bind Respondent to this Order.

58. EPA and Respondent may subsequently amend this Order, in writing, in accordance with the authority of the CAA. In the event of any amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

59. By signing this Order, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, to the best of its knowledge and belief, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

H. FAILURE TO COMPLY

60. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

61. Any violation of this Order may result in an additional enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. EPA may use any information submitted under this

Order in an administrative, civil judicial, or criminal action. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator to:

- a. issue an administrative penalty order under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), assessing a civil penalty not to exceed \$59,114 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- b. bring a civil judicial enforcement action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$472,901 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, or both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); or
- c. request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

H. EFFECTIVE DATE

62. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), this Order shall be effective on the date that it is signed by the authorized EPA representative and shall remain in effect for one year from the Effective Date or on the date that EPA determines that Respondent has achieved compliance with all terms of this Order. This Order shall be nonrenewable.

63. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT:

BRUSHY CREEK REGIONAL WASTEWATER SYSTEM - EAST

Date: 6/5/2025


Signature

JOHN HEAPS
Name

SUPERINTENDENT
Title

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: June 6, 2025


Digitally signed by
Seager, Cheryl
Date: 2025.06.06
14:24:09 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Order on Consent
was sent this day in the following manner to the email address:

Copy via Email to EPA:

spillman.michael@epa.gov
roland.alexandrea@epa.gov

Copy via Email to Respondent:

john.heaps@roundrocktexas.gov
Cc:
agonzales@roundrocktexas.gov

John Heaps, Superintendent
City of Round Rock
3400 Sunrise
Round Rock, Texas 78664

LORENA
VAUGHN

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LORENA VAUGHN
Date: 2025.06.09
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Regional Hearing Clerk
U.S. EPA, Region 6