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

FEB 15 2011

REPLY TO THE ATTENTION OF:
SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William Hogan
City Engineer
City of Trenton
2800 Third Street
Trenton, Michigan 48183

Re: **City of Trenton, Trenton, Michigan** Consent Agreement and Final Order.
Docket No. **CAA-05-2011-0029**

Dear Mr. Hogan:

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 FEB 15 2011. Please pay the civil penalty in the amount of $46,200 in the manner prescribed in paragraphs 35-41 and reference your check with the number BD **2751103A027** and docket number.

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 Jose C. de Leon, Esq., Associate Regional Counsel, at (312) 353-7456. Thank you for your assistance in resolving this matter.

Sincerely yours,

Silvia Palomo

Silvia Palomo, Acting Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: **City of Trenton** **Wastewater Treatment Plant** **1801 Van Horn** **Trenton, Michigan 48183** **EPA ID: 100000117955** **Respondent**	**CONSENT AGREEMENT** **FINAL ORDER** **Docket No. CAA-05-2011-0029**

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY

1. The United States Environmental Protection Agency ("Complainant" or "U.S. EPA"), and the City of Trenton ("Respondent"), 1801 Van Horn, Trenton, Michigan 28183, have agreed to settle this action and thus this action is simultaneously commenced and concluded by the execution and filing of this Consent Agreement and Final Order ("CAFO") pursuant to Sections 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"), 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3).

II. JURISDICTION

2. This is an administrative action for the assessment of civil penalties instituted pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder.

3. The Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. EPA, Region 5, Chicago, Illinois.

4. Respondent is and was at all times relevant to this action the owner or operator of a stationary source located at 1801 Van Horn, Trenton, Michigan 48183.

5. This CAFO is based on information which indicates that Respondent has violated Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), and the provisions of 40 C.F.R. Part 68 as referenced at 40 C.F.R. §§ 68.12(a) and (c), at the above-referenced stationary source.

III. STATUTORY AND REGULATORY BACKGROUND

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 FR 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

12. 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 FR 31668 (June 20, 1996), which have since been codified, and amended, at 40 CFR Part 68, Chemical Accident Prevention Provisions.

13. 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.

IV. VIOLATIONS AND PENALTY PROVISIONS

14. Section 112 (r)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

15. Section 113(d) of the Act 42 U.S.C. § 7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to $27,500 per day of violation up to a total of $220,000 for each violation of Section 112(r) of the Act that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to $32,500 per day of violation up to a total of $270,000 for each violation of Section 112(r) of the Act that occurred after March 15, 2004 through January 12, 2009, 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.

16. Section 113(d)(1) of the Act 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.

V. FINDINGS OF FACT AND CONCLUSION OF LAW

17. Respondent is a "person," as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent owns and operates a facility, located at 1801 Van Horn, Trenton,

Michigan 48183, which facility consists of buildings and operating equipment ("the Facility").

19. On June 27, 2004, pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412, and implementing regulations, 40 CFR Part 68, Respondent submitted to U.S. EPA a Risk Management Plan.

20. In the Risk Management Plan it submitted to U.S. EPA, Respondent admitted the following:

a. that the Facility fell within NAICS Code 22132, as a Sewer Treatment Facility;

b. that it used "Chlorine," CAS No. 7782-50-5, as a process chemical during its operations;

c. that it used "Sulfur Dioxide," CAS No. 7446-09-5, as a process chemical during its operations;

d. that, at the time it submitted its Risk Management Plan, it held at its Facility 12,500 lbs. of Chlorine, CAS No. 7782-50-5;

e. that, at the time it submitted its Risk Management Plan, it held at its Facility 6,000 lbs. of Sulfur Dioxide, CAS No. 7446-09-5.

21. On June 28, 2007, an authorized representative of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.

22. 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) and sulfur dioxide (CAS No. 7446-09-5) as 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) and 5,000 lbs. of sulfur dioxide (CAS No. 7446-09-5) as causing regulations promulgated thereunder to be applicable.

40 C.F.R. § 68.130, Table 1.

23. The Administrator has defined "stationary source" to 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." 40 C.F.R. § 68.3.

24. The Facility, identified at Paragraph 18, is a "stationary source" as defined at 40 C.F.R. § 68.3.

25. 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."

26. 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.

27. In June 1999, having held for use in its operations at the Facility 12,000 lbs. of Chlorine (CAS No. 7782-50-5) and 6,000 lbs. of Sulfur Dioxide (CAS No. 7446-09-5), Respondent exceeded the applicability thresholds established by 40 C.F.R. § 68.130, and was governed by 40 CFR Part 68.

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

29. For purposes of compliance with 40 C.F.R. Part 68, in its Risk Management Plan, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.

30. The Respondent is subject to "Program 3" eligibility requirements for its chlorine process because the process does not meet the requirements of 40 C.F.R. § 68.10(b), since the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. §-68.25 is greater than the distance to any public receptor and the process is subject to the OSHA PSM standard set for at 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

31. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 CFR Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. §§ 68.150–185.

32. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

33. During the inspection conducted on June 28, 2007, Complainant found the following alleged violations of RMP Requirements:

a. Failure to document other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document, as required under 68.15(c);

b. Failure to determine the worst-case release quantity to be released from a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity, as required under 68.25(b)(1);

c. Failure to analyze two alternative release scenarios, one for each regulated toxic substance, as required under 68.28(a);

d. Failure to use the most recent Census data, or other updated information to estimate the population, as required under 68.30(c);

e. Failure to rely on information provided on local U.S.G.S. maps, or on any data source containing U.S.G.S. data to identify environmental receptors, as required under 68.33(b);

f. Failure to review and update the off-site consequence analysis at least every five years, as required under 68.36(a);

g. Failure to maintain records on data used to estimate population and environmental receptors potentially affected, as required under 68.39(e);

h. Failure to maintain piping and instrumentation diagrams, as required under 68.65(d)(1)(ii);

i. Failure to maintain documentation on the relief system design and design basis, as required under 68.65(d)(1)(iv);

j. Failure to use a team with expertise in engineering and process operations and appropriate personnel to complete a Process Hazard Analysis (PHA), as required under 68.67(d);

k. Failure to establish a system to promptly address the PHA team's findings and recommendations and assure that recommendations are resolved in a timely manner and documented, as required under 68.67(e);

l. Failure to update and revalidate PHAs at least every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process, as required under 68.67(f);

m. Failure to have operating procedures that address startup following a turnaround, or after emergency shutdown, as required under 68.69(a)(1)(viii);

n. Failure to have operating procedures address consequences of deviation and steps required to correct or avoid deviations, as required under 68.69(a)(2)(i) and 68.69(a)(2)(ii);

o. Failure to certify operating procedures annually, as required under 68.69(c);

p. Failure to provide refresher training at least every three years, or more often if necessary, as required under 68.71(b);

q. Failure to ascertain and document in a record that each employee involved in operating a process has received and understood training required, as required under 68.71(b);

r. Failure to prepare a record that contains the identity of the employees, the date of training, and the means used to verify that the employee has understood training, as required under 68.71(c);

s. Failure to establish and implement written procedures to maintain the on-going integrity of the process equipment, as required under 68.73(a);

t. Failure to train each employee involved in maintaining the on-going integrity of process equipment, as required under 68.73(c);

u. Failure to follow recognized and generally accepted good engineering practices for inspections and testing procedures, as required under 68.73(d)(2);

v. Failure to ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturer's recommendations, good engineering practices, and prior operating experiences or procedures, as required under 68.73(d)(3);

w. Failure to document the date of 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 inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or tests on all process equipment, as required under 68.73(d)(4);

x. Failure to assure that Management of Change procedures consider and address, prior to any change, the requirements of 68.75(b), as required under 68.75(b);

y. Failure to update process safety information as required under 68.75(d);

z. Failure to change operating procedures or practices and update them accordingly, as required under 68.75(e);

aa. Failure to certify that a 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 are being followed, as required under 68.79(a);

bb. Failure to develop a written plan of action regarding the implementation of the employee participation program, as required under 68.83(a);

cc. Failure to 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 prevention provisions, as required under 68.83(b);

dd. Failure to obtain and maintain contractor's safety information, as required under 68.87(b)(1);

ee. Failure to notify all contractors of the emergency response or emergency action program at the facility, as required under 68.87(b)(3).

34. The above-described violations of the Risk Management Program regulations are violations of Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

35. 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 the CAFO.

36. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

VI. TERMS OF SETTLEMENT

30. Complainant and Respondent agree that the settlement of this matter pursuant to Section 22.13(b) of the Consolidated Rules, 40 C.F.R. § 22.13(b), is in the public interest and

that the entry of this CAFO without engaging in litigation is the most appropriate means of resolving this matter.

31. Respondent stipulates that Complainant has jurisdiction over the subject matter of this CAFO, and Respondent waives any jurisdictional defenses.

32. Respondent neither admits nor denies the factual allegations and conclusions of law set forth above in this CAFO.

33. Respondent consents to the issuance of this CAFO and payment of a civil penalty as set forth below in this CAFO.

34. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, and waives its right to appeal the Final Order accompanying this Consent Agreement.

VII. PENALTIES AND FEES

35. In consideration of the City of Trenton's cooperation in settling this matter and such other factors as justice may require, U.S. EPA agreed to mitigate the penalty of $66,000 to $46,200.

36. The City of Trenton must pay the $46,200 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

37. The City of Trenton must send the check to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

38. A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604

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

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

40. If the Respondent does not timely pay the civil penalty, U.S. EPA may bring an action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The parties agree that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action in this matter.

41. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a penalty at the rate of at least six percent per year on any principal amount

not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

IX. GENERAL TERMS OF SETTLEMENT

42. Compliance with the terms of this CAFO shall constitute full settlement of this proceeding with respect to all civil and administrative claims alleged in the Violations section of this CAFO.

43. Nothing in this CAFO shall relieve Respondent from complying with any provision of the Act or any other applicable federal, State, or local environmental law or regulation.

44. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

45. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the regulations cited above, and to assess a civil penalty in an amount greater than assessed in this CAFO.

46. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAFO shall be null and void.

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

48. Respondent and Complainant agree to bear their own respective costs and attorneys' fees.

49. The terms of this CAFO bind Respondent, its successors, and assigns. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the facility.

50. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

51. Respondent and U.S. EPA agree to the issuance and entry of the accompanying Final Order.

52. This CAFO shall become effective on the date that it is filed with the Regional Hearing Clerk, Region 5.

Consent Agreement and Final Order
City of Trenton
Docket No. _____

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

City of Trenton
Respondent

Date: 1/12/2011 By: _____
William Hogan, City Engineer

U.S. Environmental Protection Agency
Complainant

Date: 2/3/2011 By: _____
Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Consent Agreement and Final Order
City of Trenton
Docket No. CAA-05-2011-0029

FINAL ORDER

The foregoing Consent Agreement, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 2-9-11

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CAA-05-2011-0029

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:

William Hogan
City Engineer
2800 Third Street
Trenton, Michigan 48183

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 15th day of February, 2011.

Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5