



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

SEP 28 2018

ELECTRONIC SERVICE
VIA EMAIL

REPLY TO THE ATTENTION OF:

James J. Monge, III
Attorney
CAMPBELL KNUTSON, P.A.
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121

Re: The City of Orono, Minnesota, Consent Agreement and Final Order
Docket Nos. MM-05-2018-0003 CERCLA-05-2018-0008 EPCRA-05-2018-0014

Dear Mr. Monge:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on September 28, 2018.

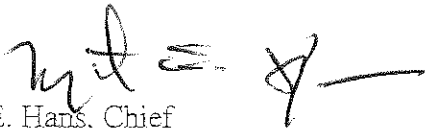
Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$4,690 in the manner prescribed in paragraph 43, and reference your check with the billing document number 2751830B006 and the docket number CERCLA-05-2018-0008.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$2,341 in the manner prescribed in paragraph 45, and reference your check with the docket number EPCRA-05-2018-0014.

Your client's payments are due on October 29, 2018.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert S. Guenther, Associate Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,


Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

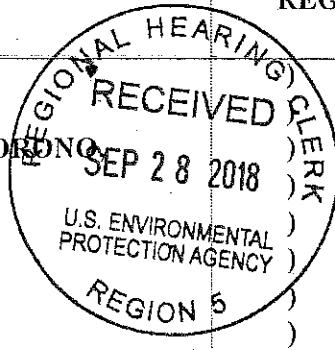
cc: Steve Tomlyanovich (w/ enclosure)
Division of Homeland Security
and Emergency Management
445 Minnesota Street, Suite 223
St. Paul, Minnesota 55101

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5 MM-05-2018-0003

In the Matter of:

THE CITY OF ORONO,
MINNESOTA,

Respondent.



Docket No. CERCLA-05-2018-0008

EPCRA-05-2018-0014

Proceeding to Assess a Civil Penalty Under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act and Section 325(b)(2) of the Emergency Planning and Community Right-to-know Act

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9609(b), section 325(b)(2) of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and 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) as codified at 40 C.F.R. part 22.

2. Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is the City of Orono, Minnesota, a municipality.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of the CAFO.

Jurisdiction and Waiver of the Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal and state agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are

produced, used or stored and such release requires notice under section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under section 304(b), 42 U.S.C. § 11004(b).

14. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA section 103 and EPCRA section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Allegations of Fact and Liability

15. Respondent is a "person" as that term is defined under section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Respondent is a "person" as that term is defined under section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the Navarre Water Treatment Plant, 2345 Blaine Avenue, Wayzata, Minnesota (the Navarre facility or, simply, the facility). Respondent operates a second treatment plant located at 2700 Kelley Parkway, referred to as the Highway 12 facility.

18. At all times relevant to this CAFO, Respondent was in charge of the facility.

19. Respondent's facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

20. Respondent's facility is a "facility" as that term is defined under section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

22. Respondent's facility is a "facility" as that term is defined under section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. Chlorine (CAS #7782-50-5) is a "hazardous substance" according to section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Chlorine has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. part 302, table 302.4.

25. Chlorine is an "extremely hazardous substance" according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

26. Chlorine has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. part 355, appendix A.

27. At all times relevant to this CAFO, chlorine was produced, used or stored at Respondent's facility.

28. On January 7, 2015, at or about 1:20 p.m., a release occurred from Respondent's facility of approximately 112 pounds of chlorine (the release).

29. In a 24-hour time period, the release of chlorine exceeded 10 pounds.

30. During the release, approximately 112 pounds of chlorine spilled, leaked, emitted, discharged, escaped into the ambient air.

31. The release is a "release" as that term is defined under section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. The release is a "release" as that term is defined under section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

33. Respondent had knowledge of the release on January 7, 2015, at approximately 1:20 p.m.

34. The release was one for which notice was required under section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

35. The release also required notice under section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

36. The release was likely to affect the State of Minnesota.

37. At all times relevant to this CAFO, the Homeland Security and Emergency Management Division of the Minnesota Department of Public Safety was the SERC for Minnesota under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

38. Respondent notified the NRC of the release on January 8, 2015, at 12:53 p.m.

39. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

40. Respondent's failure to immediately notify the NRC of the release is a violation of section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

41. Respondent provided written follow-up emergency notice of the release to the SERC on June 22, 2018.

42. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

43. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

44. Complainant has determined that an appropriate civil penalty to settle this action is \$4,690 for the CERCLA violation. In determining the penalty amount, Complainant considered Respondent's willingness to perform a supplemental environmental project, as well as the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

45. Within 30 days after the effective date of this CAFO, Respondent must pay a

\$4,690 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check must note the caption of this case, the billing document number (to be assigned) and the docket number of this CAFO.

46. Complainant has determined that an appropriate civil penalty to settle the EPCRA violation is \$2,341. In determining the penalty amount, Complainant considered Respondent's willingness to perform a supplemental environmental project, as well as the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,341 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the caption of this case and the docket number of this CAFO.

48. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers and the billing document number, if any, must accompany the payments. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

James Entzminger (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

50. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 60, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. Complainant agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

51. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. 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 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

52. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by installing sensors to minimize the volume and duration of any future chlorine leaks at Respondent's Navarre and Highway 12 water treatment plants.

53. Respondent must spend at least \$24,845 to purchase and install a chlorine detection system, which includes detectors installed in sufficient proximity to its chlorine storage and piping to alert Respondent of an accidental release as soon as practicable and notify responsible employees. This amount may also include installation, software, training and operating costs for five years. Respondent will complete the project by January 31, 2019.

54. Respondent certifies as follows:

- a. Respondent is not required to perform or develop the SEP described in paragraph 52 by any law, regulation, order, or agreement (other than this CAFO) or as injunctive relief as of the date that I am signing this CAFO.
- b. Respondent has not received and will not receive credit for this SEP in any other enforcement action.
- c. Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.
- d. To the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not expired.
- e. All cost information provided to U.S. EPA in connection with U.S. EPA's approval of the SEP is complete and accurate, and Respondent in good faith estimates that the cost to implement the SEP is \$24,845.
- f. The SEP is not a project that Respondent was planning or intending to perform or implement other than in settlement of the claims resolved in the CAFO.
- g. Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

55. U.S. EPA may inspect the Navarre and South facilities at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

56. Respondent must submit a SEP completion report to U.S. EPA by April 30, 2019.

This report must contain the following information:

- a. Detailed description of the SEP as completed, including a diagram of the chlorine detection systems and photographs of the chlorine sensors installed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

57. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 48, above.

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

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

59. Following receipt of the SEP completion report described in paragraph 56, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 61.

60. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 61, below.

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

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 53, Respondent must pay a penalty of \$24,845.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 53, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 53, Respondent must pay a penalty of \$2,500.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$500	31st day and beyond

62. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

63. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 47-48, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts. At the time U.S. EPA makes a demand for any stipulated penalties it will also send a copy of that demand to U.S. EPA's Cincinnati Finance Center via email at CINWD_AcctsReceivable@epa.gov.

64. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of section 103 of the Comprehensive Environmental Response, Compensation and Liability Act and section 304(b), (c) of the Emergency Planning and Community Right-to-know Act."

65. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

General Provisions

66. The parties consent to service of this filed CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant) and JMonge@ck-law.com (for Respondent).

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

68. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

69. Respondent certifies that it is complying with section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and section 304(c) of EPCRA, 40 U.S.C. § 11004(c).

70. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA or other applicable federal, state and local laws and regulations.

71. This CAFO is a final order for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

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

74. Each party agrees to bear its own costs and attorney's fees in this action.

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

City of Orono, Minnesota, Respondent

9-24-18
Date

ATTEST:
9-24-18
Date


Dennis Walsh, Mayor


Anna Carlson, City Clerk

U.S. Environmental Protection Agency, Complainant

9-26-2018
Date

9/26/2018
Date

Jo-El
Jason El-Zein, Chief
Emergency Response Branch I
U.S. Environmental Protection Agency
Region 5

Douglas Ballotti
Douglas Ballotti, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

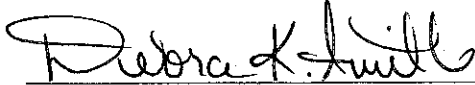
In the Matter of: City of Orono, Minnesota

Docket No. MM-05-2018-0003 CERCLA-05-2018-0008 EPCRA-05-2018-0014

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/27/18
Date


for Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on September 28, 2018 in the following manner to the addressees:

Copy by E-mail to
Respondent:

James J. Mongé, III
JMonge@ck-law.com

Copy by E-mail to
Attorney for Complainant:

Robert S. Guenther
Guenther.robert@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
Coyle.ann@epa.gov

Dated: September 28, 2018
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

