



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 AUG 24 PM 1:42

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0018

IN THE MATTER OF:)	
)	
BISMARCK WATER TREATMENT)	FINAL ORDER
FACILITY)	
Bismarck, North Dakota)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 24th DAY OF August, 2010.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	
)	
Bismarck Water Treatment Facility)	EXPEDITED SETTLEMENT AGREEMENT
Bismarck, North Dakota)	
)	(COMBINED COMPLAINT AND
)	CONSENT AGREEMENT)
Respondent)	DOCKET NO. : CAA-08-2010-0018

This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by the Bismarck Water Treatment Facility (Respondent) pursuant to § 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). The EPA and the U.S. Department of Justice have determined, pursuant to § 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On May 10, 2010, an authorized representative of the EPA conducted a compliance inspection of the Bismarck Water Treatment Facility located at 615 River Road in Bismarck, North Dakota, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under § 112(r) of the Act. The EPA found that the facility had violated regulations implementing § 112(r) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 2 Process Checklist-Alleged Violations & Penalty Assessment* (Checklist and Penalty Assessment).

SETTLEMENT

In consideration of Respondent's facility service size, its full compliance history, its good faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$3,975. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

This settlement is subject to the following terms and conditions:

1. The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in the Checklist and Penalty Assessment and consents to the assessment of the penalty as stated above.
2. Respondent waives its rights to a hearing afforded by § 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA, and consents to the EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and attorney's fees, if any.
4. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days from the date the ESA is signed by the Respondent.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit payment in the amount of \$3,975. **The payment shall reference the name and docket number of this case** and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

David Cobb
EPCRA/RMP Enforcement Coordinator
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

Once Respondent receives a copy of the completely signed ESA, a copy of the Final Order issued by the Regional Judicial Officer in this matter, and Respondent pays in full the penalty assessment described above, then the EPA agrees to take no further action to seek civil penalties from Respondent for the violations that the attached Risk Management Plan Penalty Checklist alleges occurred on or before May 10, 2010. The EPA does not waive its right to take enforcement action for other violations of the Clean Air Act or for violations of any other statute.

If Respondent fails to return the signed original ESA by the stated deadline, fails to timely submit the above-referenced payment, or fails to correct the violations no later than 60 days from the date the ESA is signed, a motion will be filed to withdraw the consent agreement and final order. EPA may then file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

Bismarck Water Treatment Facility Expedited Settlement Agreement

FOR RESPONDENT:



Date: 8/3/10

Name (print): JOHN MARTENS

Title (print): MAYOR

Bismarck Water Treatment Facility

FOR COMPLAINANT:



Date: 8/10/10

Andrew M. Gaydosh,
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice



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Bismarck Water Treatment Facility – Bismarck, North Dakota

EXPEDITED SETTLEMENT PENALTY MATRIX

**MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR VIOLATIONS
FOUND DURING RMP INSPECTIONS**

Governmental Entities*

Service Size (pop.)	Multiplier
0-10,000	.2
10,001-25,000	.4
25,001-50,000	.5
>50,000	1

*Primarily public drinking water and waste water systems (40 CFR Part 68, pg 31715, dated June 20, 1996)

PENALTY WORKSHEET

Adjusted Penalty = Unadjusted Penalty X Service Size Multiplier

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Process Checklist of Alleged Violations & Penalty Assessment

The Service Size multiplier considers the population served by the entity. The penalty is the amount of the non-negotiable penalty that is calculated by multiplying the total Unadjusted Penalty and the Service Size multiplier.

PENALTY CALCULATION

Unadjusted Penalty X Service Size Multiplier = Adjusted Penalty

$$\$3,975 \times 1 = \$3,975^1$$

Adjusted Penalty - \$3,975

1. The service population for Bismarck Water Treatment Facility is 65,000

RMP PROGRAM LEVEL 2 PROCESS CHECKLIST

ALLEGED VIOLATIONS AND PENALTY ASSESSMENT

Facility Name: **Bismarck Water Treatment Facility**

INSPECTION DATE: 05/10/2010

SECTION C: PREVENTION PROGRAM

Prevention Program – Process Hazard Review [68.50]

Did the PHR identify the hazards associated with the process and regulated substances? [68.50(a)(1)] **No. Several items on the 2009 PHR were erroneously checked “Yes” when they should have been checked “No”. Therefore several hazards were ignored.**

PHR uses a checklist format in which checklist questions are answered “Yes”, “No”, or “NA” by representatives of Bismarck Water Treatment Facility. Questions answered “Yes” do not represent a hazard. Questions answered “No” do represent a hazard.

Examples include:

- **The question, “Are leak detectors tested?” was answered “Yes”; however, the two chlorine detectors which are hooked to the SCADA system are not tested.**
- **The question, “For operators on the job before June 21, 1999, has certification that they have the required knowledge, skills, and ability to perform their duties safely been documented?” was answered “Yes”; however, no documentation was available.**
- **The question, “Are contractors used at the facility?” was answered “No”; however, the contractor, Hawkins, performs all maintenance on the chlorine system.**

150

Did the owner or operator ensure that problems identified were resolved in a timely manner? [68.50(c)] **No. Facility noted that Chlorine Feed Room was only equipped with one exit in its 2009 Process Hazard Review; however, the deficiency was not resolved.**

150

Did the owner or operator update the review at least once every five years or whenever a major change in the processes occurred? [68.50(d)] **PHR’s have been updated every 7 years.**

750

Prevention Program – Operating Procedures [68.52]	
<p>Has the owner or operator prepared written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process? [68.52(a)] No. Operating procedure for unloading chlorine tonners from delivery truck was not available for review during the inspection.</p>	750
Prevention Program – Training [68.54]	
<p>For those employees already operating a process on June 21, 1999, did the owner or operator certify in writing that the employees had the required knowledge, skills, and abilities to safely carry out the duties and responsibilities, as provided in the operating procedures? [68.54(a)] No. No certification in writing was available which documented that employees had required knowledge, skills, and abilities (All employees were hired before June 21, 1999).</p>	750
<p>Has the owner or operator provided refresher training at least every three years, or more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process? [68.54(b)] No. Facility has not conducted any refresher training on SCBA's in the last five years.</p> <ul style="list-style-type: none"> • Facility keeps three SCBA's on-site 	150
Prevention Program – Maintenance [68.56]	
<p>Has the owner or operator prepared and implemented procedures to maintain the on-going mechanical integrity of the process equipment? [68.56(a)] No. No procedures have been implemented to maintain the equipment other than arranging for a contractor, Hawkins, to come out once per year to look at the chlorine system and to rebuild/recondition the vacuum regulators Two of the four on-site chlorine detectors are not maintained. These two detectors are hooked up to the SCADA system.</p>	600
Prevention Program – Compliance Audits [68.58]	
<p>Has the owner or operator certified that compliance audits are conducted every three years to verify that the procedures and practices are adequate and are being followed? [68.58(a)] No. Compliance audits are completed every 5 years. The 2004 Compliance Audit and 2009 Compliance Audit were provided.</p>	300

SECTION E: EMERGENCY RESPONSE [68.90 – 68.95]

Does the emergency response plan provide documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures? [68.95(a)(1)(ii)] No. Emergency Response Plan contains no documentation of proper first-aid and emergency medical treatment for covered chemical.	375
BASE PENALTY	\$3,975

RECOMMENDATIONS

1. Ensure that SCBA equipment is tested in accordance with industry standards.

Determine and document industry standards used (ie: DOT 49 CFR 180.205, Compressed Gas Association) and frequency of tests for SCBA's. Facility does not take an active role in testing the SCBA's. Facility may not be keeping records regarding SCBA maintenance. Instead, the facility relies on the fire department (FD) to inspect the SCBA's. Facility assumes that the SCBA's are compliant with all standards because the FD inspects the SCBA's. **[29 CFR 1910 § 134 (h)(3)(iii)]**

Bismarck Water Treatment Facility should have a policy in place which ensures that the SCBA's are properly inspected at the appropriate intervals. Facility should not rely on the FD to make sure that the SCBA's are properly inspected.

2. Update operating procedure to include a step which ensures that the heater on the vacuum regulator is working properly. According to Water Plant Superintendent, the Chlorine tank procedure should be updated. **[40 CFR 68.52(c)]**

3. Train employees in relevant emergency procedures (conduct evacuation drills). **[40 CFR 68.95(a)(3)]**

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **BISMARCK WATER TREATMENT FACILITY; DOCKET NO.: CAA-08-2010-0018** was filed with the Regional Hearing Clerk on August 24, 2010.

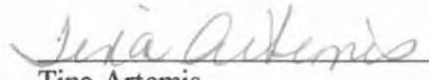
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on August 24, 2010, to:

Charlie Jaskowiak, Water Plant Superintendent
Bismarck Water Treatment Facility
P.O. Box 5503, 601 S. 26th Street
Bismarck, ND 58506-5503

And

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 24, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

