



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2011 JUL 27 PM 12:55

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2011-0017

IN THE MATTER OF:

CITY OF FORT MORGAN
WATER TREATMENT PLANT
Wiggins, Colorado

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13 and 22.18, of EPA's Consolidated Rules of Practice, the Complaint and Consent Agreement (Simultaneous and Combined) 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 27th DAY OF July, 2011.

Elyana R. Sutra
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 JUL 27 PM 12:

FILED
EPA REGION VIII
HEARINGS CLERK

IN THE MATTER OF:)

City of Fort Morgan)
Water Treatment Plant)
Wiggins, Colorado)

Respondent)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO.: CAA-08-2011-0017

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 City of Fort Morgan Water Treatment Plant (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 February 22, 2011, an authorized representative of the EPA conducted a compliance inspection of the City of Fort Morgan Water Treatment Plant facility located at 14625 Road 8 in Wiggins, Colorado 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 \$675. 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 \$675. 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 = 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read “ D 68010727
Environmental Protection Agency “

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 civil action against the Respondent for any violations of requirements contained in the Risk Management Plan Penalty Checklist that may have occurred on or before February 22, 2011. 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.

City of Fort Morgan Water Treatment Plant Expedited Settlement Agreement

FOR RESPONDENT:




Date: 7-15-11

Name (print): John W. Turner

Title (print): Water Treatment Superintendent
City of Fort Morgan Water Treatment Plant

FOR COMPLAINANT:



Date: 7/20/11

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 WASHINGTON, D.C. 20460
 OFFICE OF
 ENFORCEMENT AND
 COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
City of Fort Morgan Water Treatment Plant – Wiggins, Colorado

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

Governmental Entities

Total Population Served	1-5*	>5-10*	>10*
1 - 10,000	.1	.15	.3
10,001 – 100,000	.15	.3	.4
➤ 100,000	.3	.4	.6

*Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

PENALTY WORKSHEET

Adjusted Penalty = Unadjusted Penalty X Service Size/Threshold Quantity 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/Threshold Quantity multiplier considers the population served by the entity and the amount of regulated chemicals at 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/Threshold Quantity multiplier.

PENALTY CALCULATION

Unadjusted Penalty X Service Size Multiplier = Adjusted Penalty

$$\$4500 \times .15^* = \$675$$

Adjusted penalty = \$675

*The service population for this facility is 11,035; the covered chemical, chlorine, exceeds the listed threshold value by 2.4 times.

**RMP PROGRAM LEVEL 2 PROCESS CHECKLIST
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Facility Name: City of Fort Morgan Water Treatment Plant – Wiggins, Colorado

INSPECTION DATE: 2/22/2011

SUBPART C: PREVENTION PROGRAM [68.48 – 68.60]

PENALTY

Prevention Program – Hazard Review [68.50]

Has the owner or operator updated the review at least once every five years or whenever a major change in the processes occurred? [68.50(d)]: **No**

The hazard review has not been updated in the past five years. FMWTP personnel indicated that this hazard review was performed in 1999. The 1999 hazard review did not identify safeguards such as load testing the hoist and calibrating the chlorine detection monitors.

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Prevention Program – Training [68.54]

Has the owner or operator ensured that each employee who is presently operating a process, and each employee newly assigned to a covered process been trained or tested competent in the operating procedures that pertain to their duties? [68.54(a)] **No.**

Documentation was not available during the EPA inspection to ensure that employees have been trained or tested competent in the operating procedures pertaining to their duties.

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Has the owner or operator provided refresher training at least every three years, and 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.**

Documentation was not available during the EPA inspection to ensure that refresher training had been provided every three years.

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BASE PENALTY

\$4500

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT (COMBINED CONSENT AGREEMENT/FINAL ORDER** in the matter of **CITY OF FORT MORGAN WATER TREATMENT PLANT; DOCKET NO.: CAA-08-2011-0017** was filed with the Regional Hearing Clerk on July 27, 2011.


Further, the undersigned certifies that a true and correct copy of the documents were delivered 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 July 27, 2011, to:

John Turner, Water Treatment Superintendent
City of Fort Morgan Water Treatment Plant
14625 Road 8
Wiggins, CO 80654

E-mailed to:

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

July 27, 2011


Tina Artemis
Paralegal/Regional Hearing Clerk

