



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2008MAY-1 09:10

DOCKET NO.: CAA-08-2008-0017

IN THE MATTER OF:

CITY AND COUNTY OF BUTTE-SILVER BOW  
Butte, Montana

RESPONDENT

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FINAL ORDER

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 15<sup>th</sup> DAY OF May, 2008.

Eiyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF:	)	
	)	<b>EXPEDITED SETTLEMENT</b>
	)	<b>AGREEMENT</b>
<b>City and County of Butte-Silver Bow</b>	)	
<b>Butte, Montana</b>	)	(COMBINED COMPLAINT AND
	)	CONSENT AGREEMENT)
Respondent	)	DOCKET NO. : CAA-08-2008-0017

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 and County of Butte-Silver Bow ("Respondent") pursuant to sections 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). EPA and the U.S. Department of Justice have determined, pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On November 26 and 27, 2007, an authorized representative of EPA conducted compliance inspections of the Basin Creek Reservoir and Big Hole Water Treatment facility located at Basin Creek Road, Butte, Montana, and I-15 South Exit 111, Divide, Montana, respectively, to determine compliance with the Risk Management Plan ("RMP") regulations promulgated at 40 C.F.R. part 68 under section 112(r) of the Act. EPA found that the facilities had violated regulations implementing section 112(r) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 3 Process Checklist-Alleged Violations & Penalty Assessment* ("Checklist and Penalty Assessment").

SETTLEMENT

In consideration of Respondent's individual facility's 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 at both facilities for the total penalty amount of \$960 (\$480 for each facility). An explanation for each penalty calculation is found in the attached *Expedited Settlement Penalty Matrices*.

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 each 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 section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA, and consents to EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and 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 sheets 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 \$960. 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](http://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

Cheryl Turcotte  
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.

Upon Respondent's receipt of the signed ESA and Final Order by the Regional Judicial Officer and payment of the penalty as set forth in this ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Risk Management Plan Penalty Checklist. 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 the signed original ESA is not returned to the EPA Region 8 office at the above address in correct form by the Respondent in a timely manner, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

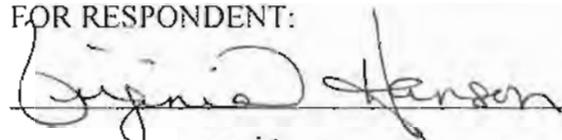
In addition, if Respondent fails to comply with the provisions of this ESA, by either 1) failing to timely submit the above-referenced payment or 2) by failing to correct the violations no later than 60 days from the date the ESA is signed by the Respondent, the Respondent agrees

that this agreement shall become null and void, and that EPA may file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

**City and County of Butte-Silver Bow Expedited Settlement Agreement**

FOR RESPONDENT:

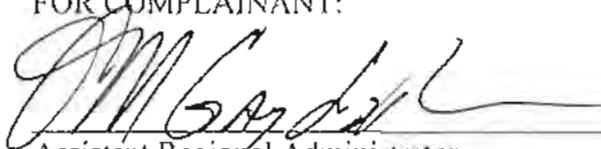
  
\_\_\_\_\_

Date: 4/22/08

Name (print): Virginia Hanson

Title (print): Risk Management Coordinator  
City and County of Butte-Silver Bow

FOR COMPLAINANT:

  
\_\_\_\_\_

Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice

Date: 4/29/08

## RMP PROGRAM LEVEL 3 PROCESS CHECKLIST

### ALLEGED VIOLATIONS & PENALTY ASSESSMENT

Facility Name: Basin Creek Reservoir – Butte, Montana

INSPECTION DATE: 11/26/2007

#### Section A: Prevention Program

PENALTY

##### Prevention Program – Mechanical Integrity [68.73]

Has the owner or operator performed inspections and tests on process equipment [68.73(d)(1)]? **No. There was no documented inspection of chlorine hoist.**

750

##### Prevention Program – Compliance Audits [68.79]

Are the audit findings documented in a report [68.79(c)]? **No. Internal compliance audit findings were not documented.**

150

Has the owner or operator promptly determined and documented an appropriate response to each of the findings of the audit and documented that deficiencies had been corrected? [68.79(d)] **No. There was no checklist or corrective action documented.**

150

Has the owner or operator retained the two most recent compliance reports [68.79(e)]? **No. Internal compliance reports were not documented.**

150

**BASE PENALTY \$1200**

#### Recommendations

**Management of Change [68.75(b)]** – Create a format to capture the following: 1) technical basis for any proposed change, 2) impact of change on safety and health, 3) modifications to operating procedures, 4) necessary time period for the change, and 5) and authorization requirements for the proposed change.

**Incident Investigation [68.81]** – Create a format to document incidents resulting in catastrophic releases or potential for catastrophic releases, include facility's definition of an incident.

**Contractors [68.87]** – Create a format for evaluation and training of contractors.

## RMP PROGRAM LEVEL 3 PROCESS CHECKLIST

### ALLEGED VIOLATIONS & PENALTY ASSESSMENT

Facility Name: Big Hole Water Treatment Facility – Divide, Montana

INSPECTION DATE: 11/27/2007

#### Section A: Prevention Program

PENALTY

##### Prevention Program – Mechanical Integrity [68.73]

Has the owner or operator performed inspections and tests on process equipment [68.73(d)(1)]? No. There was no documented inspection of chlorine hoist.

750

##### Prevention Program – Compliance Audits [68.79]

Are the audit findings documented in a report [68.79(c)]? No. Internal compliance audit findings were not documented.

150

Has the owner or operator promptly determined and documented an appropriate response to each of the findings of the audit and documented that deficiencies had been corrected? [68.79(d)] No. There was no checklist or corrective action documented.

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Has the owner or operator retained the two most recent compliance reports [68.79(e)]? No. Internal compliance reports were not documented.

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**Incident Investigation [68.81]** – Create a format to document incidents resulting in catastrophic releases or potential for catastrophic releases, include facility's definition of an incident.

**Contractors [68.87]** – Create a format for evaluation and training of contractors.



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**BASIN CREEK RESERVOIR - BUTTE, MT  
 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 FOR BASIN CREEK RESERVOIR**

**Unadjusted Penalty X Service Size Multiplier = Adjusted Penalty**

$$\begin{aligned}
 \$1,200 &= \$1,200 \times .4^1 \\
 \text{Proposed penalty} &= \$480
 \end{aligned}$$

<sup>1</sup> The service population for Basin Creek Reservoir is 16,000.



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**BIG HOLE WATER TREATMENT FACILITY - DIVIDE, MT  
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 FOR BIG HOLE WATER TREATMENT FACILITY**

**Unadjusted Penalty X Service Size Multiplier = Adjusted Penalty**

$$\begin{aligned}
 \$1,200 &= \$1,200 \times .4^1 \\
 \text{Proposed penalty} &= \$480
 \end{aligned}$$

<sup>1</sup> The service population for Big Hole Water Treatment facility is 24,000.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **CITY and COUNTY OF BUTTE-SILVER BOW; DOCKET NO.: CAA-08-2008-0017** was filed with the Regional Hearing Clerk on May 1, 2008.

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 May 1, 2008, to

John Van Daveer  
Director of Public Works  
City and County of Butte-Silver Bow  
126 W. Granite Street  
Butte, MT 59701

E-mailed to:

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

May 1, 2008



Tina Artemis  
Paralegal/Regional Hearing Clerk

