



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2012 DEC 19 AM 11:15

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2013-0005

IN THE MATTER OF:

JAMESTOWN WATER

TREATMENT PLANT

City of Jamestown, North Dakota

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2), 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 Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 19th DAY OF December, 2012.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

Jamestown Water Treatment Plant )  
City of Jamestown, North Dakota )

Respondent )

**EXPEDITED SETTLEMENT AGREEMENT**

(COMBINED COMPLAINT AND  
CONSENT AGREEMENT)

DOCKET NO.: CAA-08-2013-0005

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, 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 Jamestown Water Treatment Plant, City of Jamestown, North Dakota (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) and 22.18. The 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 the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

2. The Respondent, Jamestown Water Treatment Plant, City of Jamestown, North Dakota is a municipal corporation that does business in the State of North Dakota.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § § 7602(e).

ALLEGED VIOLATIONS

4. On June 5, 2012, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 325 17<sup>th</sup> Street Southeast, Jamestown, North Dakota, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 112(r)(7) 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). The Checklist and Penalty Assessment is incorporated into this ESA.

Jamestown Water Treatment Plant, City of Jamestown, North Dakota  
EXPEDITED SETTLEMENT AGREEMENT

SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$2,080. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. This settlement is subject to the following terms and conditions:
  - a. 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.
  - b. The 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.
  - c. Each party to this action shall bear its own cost and attorney fees, if any.
  - d. The Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days after receiving the Final Order.
  - e. The Respondent waives any and all available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within thirty (30) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$2,080. **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:

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

Jamestown Water Treatment Plant, City of Jamestown, North Dakota  
EXPEDITED SETTLEMENT AGREEMENT

Federal Express, Airborne, or other commercial carrier  
(or when a physical address is required):

US Bank  
U.S. EPA Fines & Penalties  
Government Lockbox 979078  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
(314) 418-4087

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 (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact - Jesse White 301-887 6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account Number: 310006  
CTX Format.

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

[www.PAY.GOV](http://www.PAY.GOV)  
(Enter sfo 1.1 in the search field  
Open form and complete required fields)

Jamestown Water Treatment Plant, City of Jamestown, North Dakota  
EXPEDITED SETTLEMENT AGREEMENT

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  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to, the following:
  - a. claims based on a failure by the Respondent to meet a requirement of this ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
  - b. claims based on criminal liability; and
  - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment or fails to correct the violations no later than sixty (60) days after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.

Jamestown Water Treatment Plant, City of Jamestown, North Dakota  
EXPEDITED SETTLEMENT AGREEMENT

13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent Jamestown Water Treatment Plant, City of Jamestown, North Dakota:

 \_\_\_\_\_ Date: 11/20/12

Name (print): Katie Andersen

Title (print): Mayor

For Complainant United States Environmental Protection Agency, Region 8:

 \_\_\_\_\_ Date: 12/18/12

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

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

Facility Name: Jamestown Water Treatment Plant (Jamestown WTP) – Jamestown, North Dakota

**INSPECTION DATE: 6/5/12**

**SUBPART C: PREVENTION PROGRAM**

**PENALTY**

**Prevention Program – Safety Information [68.48]**

Has the owner or operator ensured that the process is designed in compliance with recognized and accepted good engineering practices? (Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.) [68.48(b)] **No.**

- **The design should be in accordance with industry standards, such as those found in *The Water and Wastewater Operators Chlorine Handbook Pamphlet 155 section 7.7*, which states that all exit doors should be equipped with anti-panic hardware that allows for easy opening. The double door in the chlorine room serves as the second access door. It does not have anti-panic hardware installed on the inside of the door.**
- **The design should be in accordance with industry standards, such as those found in the *ANSI Z358.1*, which states that an eyewash station must be located within 10 seconds from the possible area of exposure. It must be in a well lit area, be on the same level as the area of exposure and should be identified by a sign. The eyewash station at Jamestown WTP does not meet these criteria.**

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**Prevention Program – Hazard Review [68.50]**

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

- **The most recent hazard review was dated 10-02-02. The facility did not meet the requirement to update the hazard review every five years.**

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<b>Prevention Program – Compliance Audits [68.58]</b>	
<p>Has the owner or operator certified that compliance audits are conducted at least every three years to verify that the procedures and practices are adequate and are being followed? [68.58(a)] <b>No.</b></p> <ul style="list-style-type: none"> <li>• <b>The facility has not completed a compliance audit.</b></li> </ul>	<b>1200</b>
<b>SUBPART G: RISK MANAGEMENT PLAN</b>	
<b>Risk Management Plan – [68.160 – 68.195]</b>	
<p>Did the single registration form include the following data: For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process? [68.160(b)(7)] <b>No.</b></p> <ul style="list-style-type: none"> <li>• <b>The registration indicated that the facility has 4000 lbs. of chlorine on site when in fact they have 10,000 lbs.</b></li> </ul>	<b>1000</b>
<b>BASE PENALTY</b>	<b>\$5,200</b>





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

EXPEDITED SETTLEMENT PENALTY MATRIX  
Jamestown Water Treatment Plant – Jamestown, North Dakota

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

**Governmental Entities**

(Primarily public drinking water and waste water systems)

Total Population Served	1 – 5*	> 5 – 10*	>10*
1 – 10,000	0.2	0.4	0.6
10,001 – 100,000	0.4	0.6	0.8
> 100,000	0.6	0.8	1.0

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

## **PENALTY WORKSHEET**

### **Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

The Size-Threshold Quantity multiplier is a factor that considers the population served by the facility and the amount of regulated chemicals at the facility.

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

### **Example:**

XYZ Facility is a private company which has 24 employees and 7 times the threshold amount for the particular chemical in question. After adding the penalty numbers in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet an unadjusted penalty of \$4700 is derived.

### Calculation of Adjusted Penalty

- 1<sup>st</sup> Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 10-100 employees and the row for >5-10 times the threshold quantity amount gives a multiplier factor of 0.8.
- 2<sup>nd</sup> Use the Adjusted Penalty formula  
  
Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.8(Size-Threshold Multiplier)  
Adjusted Penalty = \$3760
- 3<sup>rd</sup> An Adjusted Penalty of \$3760 would be assessed to XYZ Facility for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

## **PENALTY CALCULATION**

### **Unadjusted Penalty X Threshold Quantity Multiplier = Adjusted Penalty**

$$\$5,200 \times .4 = \$2,080$$

### **Adjusted penalty = \$2,080**

Jamestown Water Treatment Plant has 4 times the Threshold Quantity of regulated chemical (chlorine) and serves a population of 15,000.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **JAMESTOWN WATER TREATMENT PLANT; DOCKET NO.: CAA-08-2013-0005** was filed in the Regional Hearing Clerk's Office on December 19, 2012.

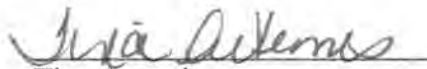
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on December 19, 2012.

Reed Schwartzkopf, City Engineer  
Jamestown Water Treatment Plant  
City of Jamestown  
102 3rd Avenue SE  
Jamestown, ND 58401

E-mailed to:

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

December 19, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

