



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 AUG 12 AM 8:52

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

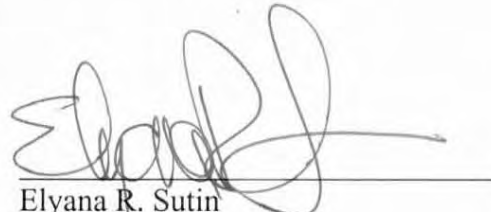
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0015

IN THE MATTER OF:)	
)	
SHERARD WATER TREATMENT PLANT)	FINAL ORDER
Cheyenne, WY)	
)	
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 Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 12th DAY OF August, 2010.



Elyana R. Sutin
Regional Judicial Officer



Date: 7/26/2010

2010 AUG 12 AM 8:52

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Sherard Water Treatment Plant)
Cheyenne, Wyoming)
)
)
Respondent)
_____)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO.: CAA-08-2010-0015

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 Sherard 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 January 14, 2010, an authorized representative of the EPA conducted a compliance inspection of the Sherard Water Treatment Plant facility located at 1821 Happy Jack Road in Cheyenne, Wyoming 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 3 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 \$1,950. 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 \$1,950. **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 January 14, 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.

Sherard Water Treatment Plant Expedited Settlement Agreement

FOR RESPONDENT:

Bob Spillman

Date: 7/27/10

Name (print): Bob Spillman

Title (print): Manager, Water Treatment Division
Sherard Water Treatment Plant

FOR COMPLAINANT:

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

Date: 8/6/10

RMP PROGRAM LEVEL 3 PROCESS CHECKLIST
ALLEGED VIOLATIONS & PENALTY ASSESSMENT

Facility Name: Sherard Water Treatment Plant – Cheyenne, Wyoming

INSPECTION DATE: 1/14/2010

SECTION C: PREVENTION PROGRAM

PENALTY

Prevention Program – Process Hazard Analysis [68.67]

Did the PHA address the following:

- Engineering and administrative controls applicable to hazards and interrelationships? [68.67(c)(3)] **No. Engineering and administrative controls applicable to hazards and interrelationships were not addressed.**
- Consequences of failure of engineering and administrative controls? [68.67(c)(4)] **No. Consequences of failure of engineering and administrative controls were not addressed.**
- Human factors? [68.67(c)(6)] **No. Human factors were not addressed.**
- An evaluation of a range of the possible safety and health effects of failure of controls? [68.67(c)(7)] **No. The range of possible safety and health effects of failure of controls was not addressed. A risk matrix or similar method was not implemented.**

300

300

300

300

Has the owner or operator established a system to promptly address the team’s findings and recommendations; assured that the recommendations are resolved in a timely manner and documented; documented what actions are to be taken; completed actions as soon as possible; developed a written schedule of when these actions are to be completed; and communicated the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations? [68.67(e)] **No. Assignment of employees directed to complete the actions is not documented.**

750

Prevention Program – Operating Procedures [68.69]

Has the owner or operator certified annually that the operating procedures are current and accurate and that the procedures have been reviewed as often as necessary? [68.69(c)] **No. The operating procedures are not certified annually.**

450

Prevention Program – Mechanical Integrity [68.73]	
<p>Has the owner or operator established and implemented written procedures to maintain the on-going integrity of the process equipment? [68.73(b)] No.</p> <ul style="list-style-type: none"> • According to plant’s Mechanical Integrity (MI) plan, maintenance on process equipment is to be performed “monthly”, “yearly”, “according to manufacturer’s recommendations”. No evidence or documentation of such maintenance being provided aside from maintenance on vacuum tubing and on vacuum regulators. • MI plan states that valves are changed every year; several valves have not been replaced in over a year. • MI plan states that chlorine piping is replaced every 3 years; piping has not been replaced since plant came online in 2002. 	750
<p>Has the owner or operator documented each inspection and test that has been performed on process equipment, which identifies the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test? [68.73(d)(4)] No. No documentation of inspections was provided except for inspection of crane hoist in Chlorine Tank Room.</p>	450
Prevention Program – Compliance Audits [68.79]	
<p>Has the owner or operator certified that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed? [68.79(a)] No. Only the 2006 compliance audit was available for review; No compliance audit was conducted in 2009.</p>	300
BASE PENALTY	\$3,900

Recommendations:
<p>Update name of person responsible for implementation of RMP - According to RMP, person assigned to implement RMP is “Bud Spillman”. According to Bud Spillman and Lynn Gaer, Lynn Gaer is person responsible for implementation of RMP. The RMP should be updated to show Lynn Gaer as the person responsible for implementation of the RMP.</p>

Ensure that future compliance audits are well documented - Facility used a CEPP checklist format to complete its 2006 compliance audit. Facility answered "Yes" to most checklist questions without any elaboration on the evaluation completed.

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, etc.) and frequency of test for SCBA's. Currently SCBA tanks are filled by the fire department (FD) and the facility assumes that the FD would not fill the tanks unless the FD inspected the tanks and deemed the tanks acceptable. Sherard should have a policy in place ensuring SCBA's are properly inspected at the appropriate intervals.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

**Sherard Water Treatment Plant
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

$$\$3,900 \times .5 = \$1,950$$

Adjusted penalty = \$1,950

*The service population for this facility is 50,000.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **SHERARD WATER TREATMENT PLANT; DOCKET NO.: CAA-08-2010-0015**. The documents were filed with the Regional Hearing Clerk on August 12, 2010.

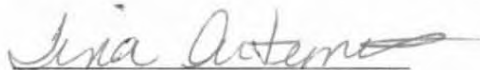
Further, the undersigned certifies that a true and correct copy of the documents were delivered David J. Janik, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on August 12, 2010.

Bud Spillman, Manager
Water Treatment Division
Cheyenne Board of Public Utilities
P. O. Box 1469
Cheyenne, WY 82003

E-mailed to:

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

August 12, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

