



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 SEP 28 PM 3:16

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2010-0019

IN THE MATTER OF:

JAMESTOWN WATER TREATMENT FACILITY

Jamestown, North Dakota

RESPONDENT

)  
)  
)  
)  
)  
)

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 28<sup>th</sup> DAY OF September, 2010.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2010 SEP 28 PM 3:16

FILED  
EPA REGION VIII  
HEARING CLERK

\_\_\_\_\_  
IN THE MATTER OF: )  
)  
**Jamestown Water Treatment Facility** ) **EXPEDITED SETTLEMENT AGREEMENT**  
**Jamestown, North Dakota** )  
)  
) (COMBINED COMPLAINT AND  
) (CONSENT AGREEMENT)  
Respondent ) **DOCKET NO.: CAA-08-2010-0019**  
\_\_\_\_\_)

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 Jamestown Wastewater 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 12, 2010, an authorized representative of the EPA conducted a compliance inspection of the Jamestown Wastewater Treatment Facility located at 102 3<sup>rd</sup> Avenue SE in Jamestown, 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 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 \$3,390. 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 \$3,390. **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](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

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 12, 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.

**Jamestown Wastewater Treatment Facility Expedited Settlement Agreement**

FOR RESPONDENT:

  
\_\_\_\_\_

Date: 9-14-10

Name (print): REED O. SCHWARTZKOPF

Title (print): CITY ENGINEER

**Jamestown Wastewater Treatment Facility**

FOR COMPLAINANT:

  
\_\_\_\_\_

Date: 9-28-10

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

ALLEGED VIOLATIONS AND PENALTY ASSESSMENT

Facility Name: Jamestown Wastewater Treatment Facility – Jamestown, North Dakota

INSPECTION DATE: 5/12/2010

SECTION A: MANAGEMENT [68.15]

PENALTY

Has the owner or operator developed a management system to oversee the implementation of the risk management program elements? [68.15(a)] **No. A Management system to oversee implementation of RMP program elements has not been developed**

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Has the owner or operator assigned a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements? [68.15(b)] **No. A qualified person or position that has overall responsibility for development, implementation, and integration of RMP has not been assigned.**

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Has the owner or operator documented persons responsible for implementing individual requirements of the risk management program and defined the lines of authority through an organization chart or similar document? [68.15(c)] **No. Assignment of persons responsible for implementing individual requirements of the RMP was not clear and was not documented. There was no organization chart or similar document available.**

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SECTION C: PREVENTION PROGRAM [68.48 – 68.60]

Prevention Program – Safety Information [68.48]

Has the owner or operator compiled and maintained the following up-to-date safety information, related to the regulated substances, processes and equipment:

- Maximum intended inventory of equipment in which the regulated substances are stored or processed? [68.48(a)(2)]

**No. Maximum intended inventory of equipment was not compiled or maintained.**

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Has the owner or operator compiled and maintained the following up-to-date safety information, related to the regulated substances, processes and equipment:

- Safe upper and lower temperatures, pressures, flows, and compositions? [68.48(a)(3)]

**No. Safe upper and lower temperatures, pressures, flows, and compositions were not compiled or maintained.**

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<b>Prevention Program – Hazard Review (HR) [68.50]</b>	
Did the HR identify the safeguards used or needed to control the hazards or prevent equipment malfunctions? [68.50(a)(3)] <b>No. The 2004 HR states: “During the process of putting a new tank in place our crane [chlorine hoist] could fail,” but HR does not address safeguards that could be initiated to control hoist failure hazards. The facility has not arranged for hoist to be inspected or certified by a third party. Safeguards should include inspection and load certification of hoist in accordance with manufacturer’s recommendations and industry standards.</b>	<b>150</b>
Did the owner or operator update the HR every 5 years? [68.50(d)] <b>No. There was no 2009 HR available; The last HR was in 2004. The facility has dealt with severe flooding in 2009 and 2010. Updated HR should address any hazards associated with flooding.</b>	<b>750</b>
<b>Prevention Program – Operating Procedures [68.52]</b>	
Did the owner or operator prepare written operating procedures (OP’s) that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process? [68.52(a)] <b>No. There were no OP’s for unloading chlorine/sulfur dioxide tonners from delivery truck.</b>	<b>750</b>
Do the OP’s address consequences of deviations and steps required to correct or avoid deviations? [68.52(b)(7)] <b>No. Chlorine has frozen in underground tanks and in underground pipes on at least two occasions. OP’s do not address frozen tanks and pipes.</b>	<b>600</b>
Do the OP’s address equipment inspections? [68.52(b)(8)] <b>No. There were no OP’s for inspection and certification of crane/hoist in chlorine/sulfur dioxide building.</b>	<b>600</b>
<b>Prevention Program – Training [68.54]</b>	
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)] <b>No. The facility does not conduct refresher training on SCBA’s . Employees do not understand how to maintain scrubber. Employees should be given refresher training in scrubber maintenance, especially on how to maintain correct level of caustic soda.</b>	<b>750</b>

<b>Prevention Program – Compliance Audits [68.58]</b>	
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)] <b>No. Compliance audits have not been completed.</b>	<b>300</b>
<b>SECTION E: EMERGENCY RESPONSE [68.90 – 68.95]</b>	
Does the emergency response plan include procedures for informing the public and local emergency response agencies about accidental releases? [68.95(a)(1)(i)] <b>No. No procedures were in place for reporting accidental releases to the LEPC and SERC.</b>	<b>375</b>
<b>SECTION G – RISK MANAGEMENT PLAN [68.160 – 68.195]</b>	
Does the RMP registration form include, for each covered process, the maximum quantity of each regulated substance (in pounds) to two significant digits? [68.160(b)(7)] <b>No. Maximum amount of chlorine at facility is incorrectly reported on RMP registration as 4,000 pounds; actual maximum amount of chlorine at facility is 10,000 pounds.</b>	<b>1,000</b>
Has the owner or operator performed a five-year update of the RMP? [68.190(b)(1)]: <b>No. The five-year update has not been performed. The five-year update was due on June 22, 2009. Update had not been completed at time of EPA inspection on May 12, 2010.</b>	<b>2,000</b>
<b>BASE PENALTY</b>	<b>\$8475</b>

<b>RECOMMENDATIONS:</b>
<p><b>Ensure that SCBA equipment is tested in accordance with industry standards.</b></p> <ul style="list-style-type: none"> <li>Determine and document industry standards used (i.e. DOT 49 CFR 180.205, Compressed Gas Association, etc) 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)]</li> <li>Jamestown Wastewater 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.</li> </ul>



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

**Upgrade eye-wash stations to comply with Chlorine Institute recommendations.**

- Section 8.3 “*Other Safety Equipment*” of Pamphlet 155, Water and Wastewater Operators Chlorine Handbook published by the Chlorine Institute states that the eye-wash station “should have the ability to provide a continuous stream of 40 gallons of tepid water for at least 15 minutes.”
- Each emergency eye-wash station in the Chlorine/Sulfur dioxide building consists of two 32-ounce bottles of saline solution.

**Tier II for CY2008 contains inaccurate information. Facilities not covered by OSHA are not required under federal law to submit Tier II reports under EPCRA § 312; State or local laws may require Tier II submissions. If Tier II’s continue to be submitted, the correct quantities/codes should be used so that the information is not misleading to the response community:**

- “Maximum Daily Amount” and “Average Daily Amount” are incorrectly reported on 2008 Tier II for Chlorine Gas and Sulfur Dioxide (in the Inventory column).
- “Maximum Daily Amount” code for Chlorine Gas is incorrectly reported as “01”. Actual code should be “04”. “Average Daily Amount” code for Chlorine Gas is incorrectly reported as “01”. Actual code should be “03”.
- “Maximum Daily Amount” code for Sulfur Dioxide is incorrectly reported as “01”. Actual code should be “03”. “Average Daily Amount” code for Sulfur Dioxide is incorrectly reported as “01”. Actual code should be “03”.



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**Jamestown Wastewater Treatment Facility, Jamestown, North Dakota  
EXPEDITED SETTLEMENT PENALTY MATRIX**

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

**Governmental Entities\***

<b>Service Size (pop.)</b>	<b>Multiplier</b>
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**

$$\$8,475 \times .4 = \$3,390$$

**Adjusted penalty = \$3,390**

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **JAMESTOWN WATER TREATMENT FACILITY, DOCKET NO.: CAA-08-2010-0019** was filed with the Regional Hearing Clerk on September 28, 2010.

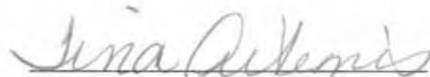
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 30, 2010, to:

Reed Schwartzkopf, City Engineer  
Jamestown Wastewater Treatment Facility  
102 3<sup>rd</sup> Avenue SE  
Jamestown, ND 58401

E-mailed to:

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

September 30, 2010

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

