



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2012 JUL 26 AM 9:57

FILED
EPA REGION VIII
MARIANA BLEEK

DOCKET NO.: CAA-08-2012-0011

IN THE MATTER OF:

**DUCHESNE VALLEY
TREATMENT PLANT
Duchesne, Utah**

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 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.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 26th **Day of** July, 2012

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 JUL 26 AM 9: 57

FILED
EPA REGION VIII
GRAND JURY

IN THE MATTER OF:)
)
Duchesne Valley Water Treatment Plant) **EXPEDITED SETTLEMENT AGREEMENT**
Duchesne, UT)
)
) (COMBINED COMPLAINT AND
) (CONSENT AGREEMENT)
Respondent)
_____) **DOCKET NO. : CAA-08-2012-0011**

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 Duchesne Valley 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 June 22, 2011, an authorized representative of the EPA conducted a compliance inspection of the Duchesne Valley Water Treatment Plant facility located at 23419 West State Park Road in Duchesne, Utah, 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 \$2,470. 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.
5. Respondent waives any and all claims for relief, and otherwise 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.

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 20 days of receiving the signed Final Order, Respondent shall remit payment in the amount of \$2,470. **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 979077
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
US EPA Fines & Penalties
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 17th 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 US Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV
(Enter sfo 1.1 in the search field
Open form and complete required fields)

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, the EPA agrees not to take any administrative action against the Respondent for any claims related solely to the alleged violations found in this ESA, including but not limited to, any claims pursuant to 40 C.F.R. part 68 under §112(r) of the Clean Air Act.

The EPA's covenants not to sue do not pertain to any matters other than those expressly specified herein. The EPA reserves and this Agreement 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 Agreement including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
- b. claims based on criminal liability;
- c. claims based on any violations of the Clean Air Act or federal or state law which occur after the effective date of this Agreement

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. The 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.

Duchesne Valley Water Treatment Plant Expedited Settlement Agreement

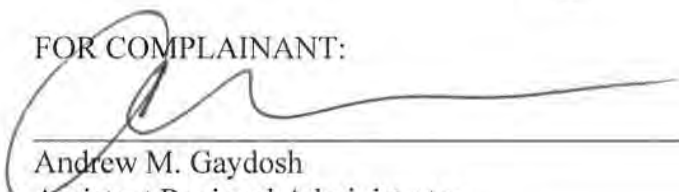
FOR RESPONDENT:



Name (print): D. Gerard Yates
Title (print): Plant Manager

Date: 6-14-2012

FOR COMPLAINANT:



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

Date: 7/19/12

**RMP PROGRAM LEVEL 3 PROCESS CHECKLIST
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Facility Name: **Duchesne Valley Water Treatment Plant (DVWTP) – Duchesne, UT**

INSPECTION DATE: 6/22/2011

SUBPART A: MANAGEMENT [68.15]

PENALTY

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.**

- **The person who had managed DVWTP’s RMP retired in August of 2010. No one has been assigned to manage DVWTP’s RMP since August of 2010.**

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Has the owner or operator documented other 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.**

- **Other persons responsible for implementing individual requirements of the risk management program have not been documented.**
- **An organization chart or similar document has not been prepared.**

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SUBPART D: PREVENTION PROGRAM [68.65 – 68.87]

Prevention Program – Safety Information [68.65]

Has the owner or operator documented safe upper and lower limits for such items as temperatures, pressures, flows, or compositions? [68.65(c)(1)(iv)] **No.**

- **Safe upper and lower limits have not been documented.**

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Prevention Program – Process Hazard Analysis [68.67]	
<p>Has the owner or operator performed Process Hazard Analyses in accordance with 40 CFR 68.67? No.</p> <ul style="list-style-type: none"> • No PHA’s were provided during the inspection. • Approximately 4½ months after the inspection, DVWTP provided the EPA with one, undated Hazard Review (HR). (The HR was provided on 11/17/2011 but did not comply with the requirements found at 40 CFR 68.67.) 	750
Prevention Program – Operating Procedures [68.69]	
<p>Do the operating procedures address consequences of deviations? [68.69(a)(2)(i)] No.</p> <p>DVWTP refers to its standard operating procedures as “standard operating instructions” (SOI’s) for legal reasons</p> <ul style="list-style-type: none"> • DVWTP’s SOI’s do not address consequences of deviations. (According to DVWTP, there are no consequences of deviations at DVWTP.) <p>Do the operating procedures address steps required to correct or avoid deviations? [68.69(a)(2)(ii)] No.</p> <ul style="list-style-type: none"> • DVWTP’s SOI’s do not address steps required to correct or avoid deviations. 	1200
Prevention Program – Mechanical Integrity [68.73]	
<p>Has the owner or operator followed recognized and generally accepted good engineering practices for inspections and testing procedures? [68.73(d)(2)] No.</p> <ul style="list-style-type: none"> • The crane in the chlorine building is not certified annually. 	900

Prevention Program – Management of Change [68.75]	
<p>Has the owner or operator implemented a Management of Change program in accordance with 40 CFR 68.75? No.</p> <ul style="list-style-type: none"> • DVWTP did not conduct an MOC before completing an expansion in 2010. • The technical basis for the proposed expansion was not addressed per 40 CFR 68.75(b)(1). • The impact of change on safety and health was not addressed per 40 CFR 68.75(b)(2). • Required modifications to operating procedures were not considered per 40 CFR 68.75(b)(3). • The necessary time period for the expansion was not considered per 40 CFR 68.75(b)(4). • Authorization requirements for the proposed expansion were not considered per 40 CFR 68.75(b)(5). <p>Note: According to DVWTP, an MOC was not required because the chlorine system was not changed. However, it appeared the chlorine system was modified in several ways. These modifications included, but were not limited to:</p> <ul style="list-style-type: none"> - Installation of new chlorine regulators - Installation of a new laboratory facility - Change-out of the chlorine injection points - Construction of a new control room - Installation of a new deluge shower - Demolition of the original filters and chemical feed (flocculent, etc.) 	<p>1500</p> <p>300</p> <p>300</p> <p>300</p> <p>300</p> <p>300</p>
SUBPART E: EMERGENCY RESPONSE [68.90 – 68.95]	
<p>Has the owner or operator developed and implemented procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of the changes? [68.95(a)(4)] No.</p> <ul style="list-style-type: none"> • DVWTP’s emergency response plan has not been updated since 2008. • Numerous changes have occurred at DVWTP since 2008. These changes include: <ul style="list-style-type: none"> - Completion of a \$40M expansion in 2010. - The plant manager’s name and phone number have changed. The previous plant manager’s name and phone number are still listed in the emergency response plan. - A former employee (Ron Mitchell) is still listed on the plan. 	<p>1500</p>

<ul style="list-style-type: none"> DVWTP's emergency response plan does not provide instructions regarding contacting the NRC. The plan has listed a phone number for the NRC but does not state when the NRC is to be contacted. This information should be included in an updated plan. 	
SUBPART G: RISK MANAGEMENT PLAN [68.160 – 68.195]	
<p>Does the single registration form include the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits? [68.160(b)(7)] No.</p> <ul style="list-style-type: none"> DVWTP has listed the maximum amount of chlorine on site as 4000 pounds. DVWTP stores 8000 pounds of chlorine for the convenience of the chlorine supplier. <p>(DVWTP has the capacity to store 16,000 pounds of chlorine but has reportedly never stored more than 8000 pounds.)</p> <p>If the emergency contact information required at 68.160(b)(6) has changed since June 21, 2004, the owner shall submit corrected information within thirty days of the change. [68.195(b)] No.</p> <ul style="list-style-type: none"> The emergency contact information is not correct. The emergency contact name changed in August of 2010 when the emergency contact retired from DVWTP. The emergency contact phone and 24-hour phone changed as well. 	<p style="text-align: center;">1000</p> <p style="text-align: center;">1000</p>
BASE PENALTY	\$12,350

RECOMMENDATIONS

- The EPA recommends that DVWTP establish a procedure for dealing with incident investigations. This procedure should comply with the requirements of 40 CFR 68.81.**

DVWTP has not experienced any incidents that resulted in, or could have resulted in, a catastrophic release of a regulated substance. However, DVWTP should be prepared to comply with 40 CFR 68.81 should such a release occur.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
Duchesne Valley Water Treatment Plant – Duchesne, Utah

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

1st 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.

2nd Use the Adjusted Penalty formula

$$\begin{aligned}\text{Adjusted Penalty} &= \$4700 \text{ (Unadjusted Penalty)} \times 0.8 \text{ (Size-Threshold Multiplier)} \\ \text{Adjusted Penalty} &= \$3760\end{aligned}$$

3rd 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

$$\$12,350 \times .2 = \$2,470$$

Adjusted penalty = \$2,470

Duchesne Valley Water Treatment Plant has 3.2 times the Threshold Quantity of regulated chemical (chlorine) and serves a population of 4400.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER** in the matter of **DUCHESNE VALLEY WATER TREATMENT PLANT; DOCKET NO.: CAA-08-2012-0011**, was filed with the Regional Hearing Clerk on July 26, 2012.

Further, the undersigned certifies that a true and correct copy of the document was 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 on July 26, 2012, to:

Gerard Yates, Water Quality Manager
Duchesne Valley Water Treatment Plant
Water Quality/Treatment Department Manager
23419 West State Park Road
Duchesne, UT 84021

And 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 26, 2012



Tina Artemis
Paralegal/Regional Hearing Clerk