

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2011 JAN -7 AM 9:33

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-08-2011-0002

IN THE MATTER OF:

MANDAN WATER TREATMENT PLANT

Mandan, 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 Fina Order.

SO ORDERED THIS 7<sup>th</sup> DAY OF January, 2011.



Elyana R. Sutin  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:	)	
	)	
<b>Mandan Water Treatment Plant</b>	)	<b>EXPEDITED SETTLEMENT AGREEMENT</b>
<b>Mandan, North Dakota</b>	)	
	)	(COMBINED COMPLAINT AND
	)	CONSENT AGREEMENT)
Respondent	)	<b>DOCKET NO.: CAA-08-2011-0002</b>
	)	

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 Mandan 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 May 10, 2010, an authorized representative of the EPA conducted a compliance inspection of the Mandan Water Treatment Plant located at 1994 38<sup>th</sup> Street in Mandan, 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 Level 2 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 \$1,820. 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 \$1,820. **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

**RMP PROGRAM PROCESS CHECKLIST**

**ALLEGED VIOLATIONS AND PENALTY ASSESSMENT**

**Facility Name:** Mandan Water Treatment Plant (MWTP)– Mandan, North Dakota

**INSPECTION DATE:** 5/10/2010

**SUBPART C: PREVENTION PROGRAM [68.48 – 68.60]**

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

Has the owner or operator compiled and maintained safe upper and lower temperatures, pressures, flows, and compositions for regulated substances, processes and equipment? [68.48(a)(3)] **No. Safe upper and lower temperatures, pressures, flows, and compositions for regulated substances, processes and equipment are not compiled and maintained.**

**150**

**Prevention Program – Hazard Review (HR) [68.50]**

Did the owner or operator update the review at least once every five years or whenever a major change in the processes occurred? [68.50(d)] **No. The 1999 HR and 2004 HR were provided; 2009 HR was not provided.**

**750**

**Prevention Program – Operating Procedures [68.52]**

Has the owner or operator prepared written operating procedures which address consequences of deviations and steps required to correct or avoid deviations? [68.52(b)(7)] **No.**

- **The operating procedures address how to avoid deviations but do not address how to correct deviations.**
- **Facility’s OP, “Consequences of Deviations and Steps Required to Avoid Deviations”, states “To prevent deviations from occurring, all employees must be thoroughly familiar with procedures prior to performing each procedure, and all maintenance and inspections must be documented.” (The OP addresses training, maintenance, and inspections but does not address steps to take if a deviation occurs due to human error or unforeseen equipment failure.)**

**600**

<b>Prevention Program – Training [68.54]</b>			
<p>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.</b></p> <ul style="list-style-type: none"> <li>• <b>Facility has not conducted refresher training on chlorine safety since 2006</b></li> <li>• <b>Facility only does refresher training on SCBA kits</b></li> </ul>		<b>750</b>	
<b>Prevention Program – Compliance Audits [68.58]</b>			
<p>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 are completed approximately every 5 years. Only 2004 Compliance Audit and 2009 Compliance Audit were provided during the inspection.</b></p>		<b>300</b>	
<b>SUBPART E – RISK MANAGEMENT PLAN [68.160 – 68.195]</b>			
<p>Has the owner or operator performed a five-year update of the RMP? [68.190(b)(1)]: <b>No. At the time of this EPA inspection, the operator had not completed the five-year update; five-year update was due on June 18, 2009 (EPA inspection was performed on May 10, 2010.)</b></p> <ul style="list-style-type: none"> <li>• Operator experienced difficulties during update process while using RMP*Info, as documented in attached emails</li> <li>• Operator completed five-year update on May 13, 2010, shortly after EPA inspection. Update was approximately 11 months late.</li> </ul>		<b>2000</b>	
	<b>BASE PENALTY</b>		<b>\$4,550</b>

## RECOMMENDATIONS:

### 1. Ensure that SCBA equipment is tested in accordance with industry standards.

- 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 keeps no 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.
- Mandan Water Treatment Plant should have a policy in place which ensures that the SCBA's are properly inspected at the appropriate intervals. Plant should not rely on the FD to make sure that the SCBA's are properly inspected.

### 2. Properly store SCBA tank at main/west entrance to original plant.

- Tank is currently resting on the floor and is not enclosed in a container. Tank should be enclosed in a container, along with its mask, regulators, etc.

### 3. Consult manufacturer, Capital Controls, regarding correct testing procedure for chlorine monitor in Chlorine Storage Room.

- MWTP currently uses bleach to test the monitor. However, MWTP was not able to document that their testing procedure was appropriate. MWTP should consult manufacturer to ensure that their testing procedure is appropriate

### 4. Conduct evacuation drills.

- To ensure that all personnel are trained in evacuation procedures, determine frequency and conduct evacuation drills in accordance with facility Emergency Action Plan.





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**Mandan Water Treatment Plant, Mandan, 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**

$$\$4,550 \times .4 = \$1,820$$

**Adjusted penalty = \$1,820**

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached, **EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER** in the matter of **MANDAN WATER TREATMENT PLANT; DOCKET NO.: CAA-08-2011-0002** was filed with the Regional Hearing Clerk on January 7, 2011.

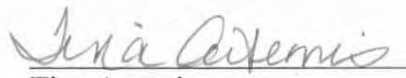
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David J. Janik, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on January 7, 2011 to:

Gary Zander, Superintendent  
Mandan Water Treatment Plant  
205 2<sup>nd</sup> Avenue NW  
Mandan, ND 58554

E-mailed to:

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

January 7, 2011

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

