



February 12, 2025 7:48 am
USEPA – Region II
Regional Hearing Clerk

REGION 2

NEW YORK, N.Y. 10007

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-02-2024-1203

This ESA is issued to: Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, NY 14304

This Expedited Settlement Agreement (“ESA”) is being entered into by the U.S. Environmental Protection Agency, Region 2 (“EPA”), by its duly delegated official, and by the Niagara Falls Water Board (“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). EPA and the United States Department of Justice have jointly determined that EPA may pursue this type of case as an administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. §7413(d)(1).

ALLEGED VIOLATIONS

On June 14, 2022, EPA conducted an onsite inspection at Respondent’s Michael C. O’Laughlin Municipal Water Plant facility, located at 5815 Buffalo Avenue in Niagara Falls, New York (the “Facility”) to determine compliance with the Act’s Risk Management Program regulations, promulgated at 40 C.F.R. Part 68 pursuant to Section 112(r) of the Act. Pursuant to the inspection, EPA has determined that Respondent violated the RMP regulations described in the attached Risk Management Program Findings (“Findings”). EPA described the violations in a letter sent by email to Facility representatives dated May 12, 2023.

SETTLEMENT

In consideration of the penalty assessment factors set forth in Section 113(e) of the Act, 42 U.S.C. §7413(e), and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the Findings for the total penalty amount of **ten thousand eight hundred dollars (\$10,800)**.

For purposes of this proceeding, Respondent agrees to the following: it waives any objections that it may have regarding jurisdiction; it neither admits nor denies the specific factual allegations contained in the Findings; it consents to the assessment of the penalty as stated herein; and it waives its rights to contest the allegations contained herein, or 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. Each party to this action shall bear its own costs and fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations described in the Findings.

After signature, a scanned copy of the signed ESA must be sent by email to Francesco Maimone at the following email address: Maimone.Francesco@epa.gov. The original, signed ESA must be sent by certified mail to:

Francesco Maimone, Physical Scientist
Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

The ESA, when executed by both parties and the Regional Judicial Officer and filed with the Regional Hearing Clerk, is binding on EPA and Respondent. Upon such filing and Respondent's timely payment of the penalty, EPA agrees it will not take any further civil penalty action against Respondent for the alleged violations of the Act referenced herein.

Nothing in this ESA shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This ESA does not relieve, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.

If the signed ESA is not returned to EPA Region 2 as instructed herein by Respondent within forty-five (45) days of the date of Respondent's receipt of it (or within ninety (90) days if an extension is requested and granted), the proposed ESA is withdrawn, without any prejudice regarding EPA's ability to file an enforcement action for the alleged violations identified herein.

Respondent agrees to submit a payment in full of \$10,800 within thirty (30) days of the filing of a fully executed copy of this ESA with the Regional Hearing Clerk.

PAYMENT INSTRUCTIONS

EPA requests that payments be made through the <http://Pay.gov> website using the following link: <https://www.pay.gov/public/form/start/11751879>.

Please ensure that the following information is included on the payment form:

- i. Amount of payment: \$10,800
- ii. Name of Respondent: Niagara Falls Water Board
- iii. Docket No.: CAA-02-2024-1203

To ensure your payment is recorded properly, you are required to notify EPA contemporaneously with

the payment. Please send an email message or letter that references the date of the payment, the payment amount, the docket number, and your name and address to the following: Francesco Maimone, at his email or address, shown above, and to:

Jean Regna
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
email: Regna.Jean@epa.gov

Milton Wise
U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, OH 45268
emails: Wise.Milton@epa.gov and cinwd_acctsreceivable@epa.gov

and

Karen Maples, Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
email: Maples.Karen@epa.gov

Failure to pay the penalty when due may subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. §7413(d)(5), to collect the penalty, including accrued interest, attorney's fees, collection costs, and nonpayment penalties.

For purposes of the requirements of 26 U.S.C. §162(f) of the Internal Revenue Code, the cost of actions taken to come into compliance with the violations identified herein are "restitution or paid to come into compliance with law."

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature: 

Date: September 27, 2024

Name (print): Sean W. Costello

Title (print): Executive Director & General Counsel

FOR COMPLAINANT:

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 2

Date: _____

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

Helen Ferrara
Regional Judicial Officer
U.S. EPA, Region 2

Date: _____

Risk Management Program Findings
CAA §112(r) Violations

Niagara Falls Water Board
Michael C. O’Laughlin Municipal Water Plant
5815 Buffalo Avenue
Niagara Falls, NY 14304

COMPLETE THIS FORM AND RETURN IT WITH THE ESA

<u>VIOLATION</u>	<u>PENALTY AMOUNT</u>
<u>Subpart D Prevention Program</u>	
<i>Management System [68.15(a)]</i> The owner or operator failed to develop a management system to oversee the implementation of the risk management program elements.	\$1,200
<i>Process Safety Information [68.65(d)(2)]</i> The owner or operator failed to ensure that equipment complies with recognized and generally accepted good engineering practices.	\$1,500
<i>Process Hazard Analysis [68.67(e)]</i> The owner or operator failed to assure that all recommendations were resolved in a timely manner and that resolutions were documented.	\$1,500
<i>Operating Procedures [68.69(a)(2)(i)]</i> The owner or operator failed to address the consequences of deviations in the operating procedures.	\$1,200
<i>Operating Procedures [68.69(a)(3)(iii)]</i> The owner or operator failed to address control measures to be taken if physical contact or airborne exposure occurs in the operating procedures.	\$1,200
<i>Training [68.71(b)]</i> The owner or operator failed to provide refresher training at least every three years to each employee involved in operating a process.	\$1,500
<i>Mechanical Integrity [68.73(e)]</i> The owner or operator failed to correct deficiencies in equipment that were outside acceptable limits in a safe and timely matter to assure safe operation.	\$900

Management of Change [68.75 (a)] \$1,500

The owner or operator failed to implement written procedures to manage changes to equipment that affect a covered process.

Compliance Audits [68.79(a)] \$1,200

The owner or operator failed to certify that the facility has evaluated compliance with the provisions of the prevention program at least every three years.

Contractors [68.87(b)(1)] \$900

The owner or operator failed to evaluate the contract owner or operator safety performance and programs when selecting contractors.

Contractors [68.87(b)(2)] \$900

The owner or operator failed to inform the contract owner or operator of potential hazards related to the contractors' work and the process.

Unadjusted Penalty \$13,500

Adjustments to Penalty

Pursuant to EPA's "Expedited Settlement Penalty Matrix, Multiplier Factors For Calculating Proposed Penalties For Violations Found During RMP Inspections," a multiplier factor of 0.8, in consideration of the total population served (10,001-100,000 people) and the quantity of the regulated substance (>10 times the threshold quantity), is being applied to reduce the penalty.

$$\$13,500 \times 0.8 \text{ (multiplier factor)} = \$10,800$$

Total Penalty **\$10,800**

The approximate cost to correct the above items: \$ 599,400 (New dry-media emergency chlorine gas scrubber [\$558,400], additional chlorine gas detectors [\$41,000]).

Compliance staff name: Sean W. Costello, Executive Director & General Counsel

Signed:  Date: September 27, 2024