



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

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

2012 DEC 19 AM 11:14

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2013-0004

IN THE MATTER OF:

MID DAKOTA WATER  
TREATMENT PLANT  
Pierre, South Dakota

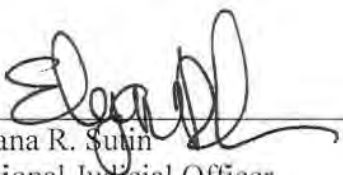
RESPONDENT

)  
)  
)  
)  
)  
)  
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2), 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 10th DAY OF December, 2012.

  
Elyana R. Sulim  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 DEC 19 AM 11:14

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

Mid Dakota Water Treatment Plant )  
Pierre, South Dakota )

**EXPEDITED SETTLEMENT AGREEMENT**

Respondent )

(COMBINED COMPLAINT AND  
CONSENT AGREEMENT)

DOCKET NO. : CAA-08-2013-0004

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, 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 Mid Dakota Water Treatment Plant (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) and 22.18. The EPA and the U.S. Department of Justice have determined, pursuant to section 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.

RESPONDENT

2. The Respondent, Mid Dakota Water Treatment Plant is owned by Mid Dakota Rural Water System, a South Dakota corporation that does business in the State of South Dakota.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § 7602(e).

ALLEGED VIOLATIONS

4. On May 1, 2012, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 29111 Holly Road, Pierre, South Dakota to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 112(r)(7) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 2 Process Checklist-Alleged Violations & Penalty Assessment* (Checklist and Penalty Assessment). The Checklist and Penalty Assessment is incorporated into this ESA.

Mid Dakota Water Treatment Plant  
EXPEDITED SETTLEMENT AGREEMENT

SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$3,600. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. This settlement is subject to the following terms and conditions:
  - a. 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.
  - b. The Respondent waives its rights 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.
  - c. Each party to this action shall bear its own cost and attorney fees, if any.
  - d. The Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days after receiving the Final Order.
  - e. The Respondent waives any and all 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.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within thirty (30) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$3,600. **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:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Mid Dakota Water Treatment Plant  
EXPEDITED SETTLEMENT AGREEMENT

Federal Express, Airborne, or other commercial carrier  
(or when a physical address is required):

US Bank  
U.S. EPA Fines & Penalties  
Government Lockbox 979078  
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 17<sup>th</sup> 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 U.S. 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)

Mid Dakota Water Treatment Plant  
EXPEDITED SETTLEMENT AGREEMENT

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  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA 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 ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
  - b. claims based on criminal liability; and
  - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment or fails to correct the violations no later than sixty (60) days after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.

Mid Dakota Water Treatment Plant  
EXPEDITED SETTLEMENT AGREEMENT

13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent Mid Dakota Water Treatment Plant:

Bill Sarringer Date: 11-13-12

Name (print): Bill Sarringer

Title (print): Plant Manager

For Complainant United States Environmental Protection Agency, Region 8:

Andrew M. Gaydosh Date: 12/18/12

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

**RMP PROGRAM LEVEL 2 PROCESS CHECKLIST  
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Facility Name: **Mid Dakota Water Treatment Plant (Mid Dakota WTP) – Pierre, South Dakota**

**INSPECTION DATE: 6/5/12**

**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?

**750**

**[68.48(a)(3)] No.**

- **Safety information did not include safe upper and lower temperatures, pressures, flows, and compositions**

Has the owner or operator ensured the process is designed in compliance with recognized and generally accepted good engineering practices? **[68.48(b)] No.**

**1500**

- **Design should be in accordance with industry standards, such as those found in NFPA 55 4.10.2.1(3) which states that hazard identification signs shall be placed at entrances where hazardous materials are stored. Chlorine room loading doors did not have a chlorine warning sign on the exterior side.**

Has the owner or operator updated information if a major change has occurred that made the information inaccurate? **[68.48(c)] No.**

**750**

- **In the facility’s RMP binders, the chlorine controller equipment specifications have not yet been changed from Capitol Controls to Siemens.**

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

Has the owner or operator addressed the following procedures: Normal Operations? **[68.52(b)(2)] No.**

**1200**

- **The facility does not have an unload procedure for the chlorine tonners.**

Has the owner or operator addressed the following procedures: Consequences of deviation and steps required to correct or avoid deviations? **[68.52(b)(7)] No.**

**1200**

- **The facility’s operating procedures do not have consequences of deviations or steps required to correct or avoid deviations.**

**Prevention Program – Maintenance [68.56]**

Has the owner or operator performed or caused to be performed inspections and tests on process equipment that follow recognized and generally accepted good engineering practices? [68.56(d)] **No.**

- **The hoist cable in the chlorine room has been visually inspected by a third party but no report of the inspection was issued. The hoist has not been certified.**
- **The outdoor deluge shower at the chlorine storage room did not work when tested by the EPA in the presence of Bill Sarringar. NOTE: The eyewash worked correctly.**
- **The manufacturer of the chlorine sensor in the chlorine room recommends that a chlorine response test be performed monthly. The facility does not perform the monthly test.**
- **The manufacturer of the chlorine sensor in the chlorine room recommends that a calibration be performed monthly. The facility does not perform the monthly calibration.**

**600**

**BASE PENALTY**

**\$6000**





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
 WASHINGTON, D.C. 20460  
 OFFICE OF  
 ENFORCEMENT AND  
 COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX  
 Mid Dakota Water Treatment Plant – Pierre, South Dakota

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

**Private Industries**

| # of Employees | 1 – 5* | >5 – 10* | > 10* |
|----------------|--------|----------|-------|
| 0 – 9          | 0.4    | 0.6      | 0.8   |
| 10 – 100       | 0.6    | 0.8      | 1.0   |
| > 100          | 1.0    | 1.0      | 1.0   |

\* Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

**PROPOSED 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 size of 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

- 1<sup>st</sup> 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.
- 2<sup>nd</sup> Use the Adjusted Penalty formula  
  
Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.8(Size-Threshold Multiplier)  
Adjusted Penalty = \$3760
- 3<sup>rd</sup> 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)

### Calculation for Adjusted Penalty

Mid Dakota Water Treatment Plant – Pierre, South Dakota

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

$$\$3,600 = \$6,000 \times 0.6^*$$

\* # of employees is 4. The covered chemical, chlorine, exceeds the listed threshold value by 8.8 times

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **MID DATKOTA WATER TREATMENT PLANT; DOCKET NO.: CAA-08-2013-0004** was filed in the Regional Hearing Clerk's Office on December 19, 2012.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, 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 December 19, 2012.

Bill Sarringer  
Water Treatment Plant Manager  
Mid Dakota Water Treatment Plant  
29111 Holly Road  
Pierre, SD 5750

E-mailed to:

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

December 19, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

