



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

SEP 30 2010

Ref: 8ENF-W-NP

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

The Honorable John Bachman, Mayor  
City of Eagle Butte  
280 South Main  
Eagle Butte, SD 57625

Re: Findings of Violation and Order for  
Compliance under Section 309 of the  
Clean Water Act  
Docket No. **CWA-08-2010-0040**  
AND  
Proposed Assessment of Class I  
Civil Penalty under Section 309 of  
the Clean Water Act  
Docket No. **CWA-08-2010-0041**

Dear Mayor Bachman:

Enclosed are a Findings of Violation and Order for Compliance (Order) and Penalty Complaint and Notice of Opportunity for Hearing (Complaint). The United States Environmental Protection Agency (EPA) is issuing the Order and Complaint pursuant to § 309(a) of the Clean Water Act, as amended (Act), 33 U.S.C. § 1319(a). Based on our review of all available information, EPA has determined that the City of Eagle Butte Wastewater Treatment Facility (City or Respondent) is in violation of the National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342.

The Order specifies the nature of the violations of the NPDES permit and describes the actions necessary for the City to achieve compliance. Specifically, the Order requires the City to comply with the NPDES permit (SD0020192) discharge notification requirements, sampling and analysis stipulations, and submittal of discharge monitoring reports.

The Complaint proposes a penalty of \$10,000 be assessed for failure to comply with the NPDES permit. The Respondent has the right to a hearing to contest the factual allegations in the Complaint, or the appropriateness of the proposed penalty. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA follows in administrative civil penalty assessments.

**If the City wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file an answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Region VIII Hearing Clerk at the following address:**

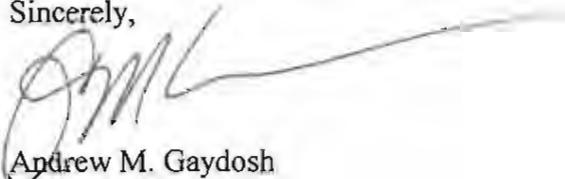
Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

If the City does not file an answer within 30 days [see 40 C.F.R. § 22.15(d)], it may be found in default. A default judgment may impose the full penalty of \$10,000 proposed in the Complaint.

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations (see 40 C.F.R. § 22.18). If a mutually satisfactory settlement can be reached, it will be formalized in a consent agreement signed by you and the delegated authority for EPA. Upon final approval of the consent agreement by the Regional Judicial Officer, the City will be bound by the terms of the consent agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon penalty. The City has the right to be represented by an attorney at any stage of the proceedings, including informal discussions with EPA.

If you have any questions regarding this letter, the order or complaint, or any other matters pertinent to compliance with the Act, the most knowledgeable people on my staff regarding these matters are Natasha Davis, Technical Enforcement, at (303) 312-6225, and David J. Janik Senior Enforcement Attorney, at (303) 312-6917.

Sincerely,



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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk  
Honorable Joseph Brings Plenty, Sr., Chairman, Cheyenne River Sioux Tribe  
David Nelson, Environmental Director, Cheyenne River Sioux Tribe

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2010 SEP 30 AM 10:57

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
 )  
City of Eagle Butte, South Dakota ) **ADMINISTRATIVE COMPLIANT AND**  
 ) **NOTICE OF OPPORTUNITY FOR**  
 ) **HEARING**  
Respondent. )  
Docket No. **CWA-08-2010-0041**

This Administrative Complaint, Compliance Order, and Notice of Opportunity for Hearing. (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (the "Act"), 33 U.S.C. §1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. This authority has been delegated to the undersigned official. The general allegations below apply to each count of this complaint.

**GENERAL ALLEGATIONS**

1. In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. §1342.
2. Section 402 of the Act, 33 U.S.C. §1342, establishes a National Pollutant Discharge Elimination System ("NPDES") program, under which the EPA may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.

3. The City of Eagle Butte (“Respondent”) is an incorporated “municipality” of the State of South Dakota as defined in section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. §122.2.
4. Respondent is a municipality and therefore a “person” as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. §122.2.
5. Effective July 1, 2006, EPA issued NPDES Permit No. SD0020192 (the “Permit”), authorizing Respondent to discharge treated effluent from Respondent’s wastewater treatment facility (the “Facility”) to the Green Grass Creek, in accordance with the conditions set forth in the Permit.
6. The Facility is located on the Cheyenne River Sioux Indian Reservation in South Dakota.
7. The Cheyenne River Sioux Tribe (the “Tribe”) does not own, manage, or control the Facility.
8. Respondent is subject to the requirements of the Act, the Permit, and the EPA’s regulations implementing the Act.
9. Part 1.3.2. of the Permit (p. 5) requires Respondent to request permission to discharge prior to the start of any discharge from the treatment system. The request for permission to discharge shall include (1) grab sample results for Biochemical Oxygen Demand (BOD<sub>5</sub>), Total Suspended Solids (TSS), pH, and Escherichia coli (E.coli) (from May 1 to September 30) from the treatment unit from which it is desired to discharge, (2) why a discharge is needed, (3) when the discharge would start, (4) the expected duration of the discharge, (5) the outfall(s) from which the discharge will occur. (6) the lagoon cell(s) that will be drawn down, (8) the approximate volume of water to be discharged, and (9) the estimated flow condition of the receiving water.

10. Part 2.11. of the Permit (p. 10) requires Respondent to give seventy-two hour notice to the Tribe before a planned discharge and immediate notice of an unplanned discharge.
11. Part 1.3.2.2. of the Permit (p. 6) requires Respondent to monitor the Facility's effluent for flow, BOD<sub>5</sub>, TSS, and pH at the beginning, middle, and end of the discharge if the discharge is less than one week, while discharge is occurring. If a single, continuous discharge is greater than one week in duration three (3) samples shall be taken during the first week and one (1) during each following week.
12. Part 1.3.2.2. of the Permit (p. 6) requires Respondent to monitor the Facility's effluent for E.coli each day for the first five (5) days of discharge and then weekly thereafter until the discharge is terminated, if the discharge occurs between May 1 and September 30.
13. Part 2.4. of the Permit (p. 8) requires Respondent to submit effluent monitoring results for each calendar quarter to the EPA and the Tribe, using a Discharge Monitoring Report ("DMR"). Each DMR is to be on EPA Form No. 3320-1 and is to be postmarked no later than the 28<sup>th</sup> day of the month following the end of the completed monitoring period. If no discharge occurs during the reporting period, Respondent is required to indicate "no discharge" on the DMR.
14. Part 1.3.1. of the Permit (p. 5) prohibits the pH of the effluent from the Facility from having a pH of less than 6.0 or exceeding 9.0 standard units (s.u.) in any single sample or analysis.
15. Part 2.8 of the Permit (pp. 9-10) require Respondent to report any violations of maximum daily discharge limitations for any of the pollutants listed in the permit to EPA and the Tribe by the first workday following the day the permittee became aware of the circumstances.

16. Part 2.9. of the Permit (p. 10) require Respondent to report any instances of noncompliance with permit conditions (other than noncompliance which may endanger health and environment, which must be reported within 24 hours) to I:PA and the Tribe at the time that monitoring reports are submitted, with each report by Respondent must specify (1) a description of the noncompliance and its cause, (2) the period of noncompliance, including exact dates and times, (3) the estimated time noncompliance is expected to continue if it has not been corrected, and (4) the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

**COUNT 1-4 (May 2009 discharge)**

17. During the authorized discharge event in May 2009 Respondent failed to monitor for floating solids, oil and grease, and flow.
18. During the authorized discharge event in May 2009 the pH exceeded the effluent daily maximum limit, Respondent failed to report the violation to EPA within 24 hours of becoming aware of the violation, and did not submit the required noncompliance report.
19. For the May 2009 discharge event, Respondent's exceeding of the effluent daily maximum limit and failure to monitor, report the violation to EPA within 24 hours, and submit a noncompliance report are four violations of the regulations and therefore constitute four violations of the Act. 33 U.S.C. 1319, 1342.

**COUNT 5-7 (March 2010 discharge)**

20. Respondent failed to request permission to discharge in March 2010 before initiating the discharge event reported to I:PA by the Tribe.

21. Respondent failed to monitor for BOD, TSS, pH, flow, oil and grease, and floating solids during the unauthorized discharge in March 2010.
22. Respondent failed to submit monitoring results for BOD and TSS, which were instead gathered by the Tribe at their expense, for the unauthorized discharge in March 2010.
23. Respondent's failure to request permission to discharge, monitor for BOD, TSS, pH, flow, oil and grease, and floating solids during the discharge, and submit monitoring results for the discharge are three violations of the regulations and therefore constitute three violations of the Act. 33 U.S.C. 1319, 1342.

#### **COUNT 8-11**

24. Respondent failed to submit DMRs for the months of July through December of 2009, and January through June of 2010.
25. Respondent's failure to submit quarterly DMRs for the months of July through December of 2009, and January through June of 2010. are four violation of the regulations and therefore constitute 12 violations of the Act. 33 U.S.C. 1319, 1342.

#### **PROPOSED CIVIL PENALTY**

Section 309(g)(1)(A) of the Act, 33 U.S.C. §1319(g)(1)(A), authorizes the EPA to assess a civil administrative penalty for any violation of a condition or limitation of a permit issued under section 402 of the Act, 33 U.S.C. §1342. For the time period involved in this case, the amount of the penalty that EPA can administratively assess is up to \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500. To assess higher civil penalties authorized by the Act, EPA and the Department of Justice would be required to bring the suit to a Federal District Court.

Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3), requires EPA to take into account the following factors in assessing a civil administrative penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.

In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of \$10,000 be assessed against Respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent and Gravity of Violations

As required, the City of Eagle Butte received permission to discharge from EPA in May 2009 but, as is also required, failed to monitor and report floating solids, oil and grease, and flow. The pH exceeded the daily maximum level, which was not reported to the EPA. On March 29, 2010 the City of Eagle Butte WWTF was discharging without the required EPA approval. The discharge ceased on March 30, 2010. The Cheyenne River Sioux Tribal Environmental Office sampled the effluent at their expense. The BOD and TSS samples taken did not exceed the levels allowed by the NPDES permit. The City of Eagle Butte failed to conduct their own monitoring which should have included BOD, TSS, pH, floating solids, oil and grease, and flow. Based on the prior exceedances there is some probability that pH could have exceeded the daily maximum level.

Prior Compliance History

This is not the first enforcement action against Respondent. On August 2, 2000, EPA issued an Administrative Order for Compliance (Compliance Order) to Respondent for failure of

the Respondent to provide a response to a Request for Information pursuant to section 308 of the Act. The Compliance Order required Respondent to submit to EPA a response to a Request for Information pursuant to section 308 of the Act, sent to Respondent on April 14, 2000 which required, among other things, submittal of (1) inspection reports, (2) pH meter calibration logs, and (3) unsubmitted DMRs.

Degree of Culpability

Respondent has submitted a request for discharge in compliance with their permit annually for several years prior to the March 2010 unauthorized discharge event, and proceeded to submit a request for discharge on April 12, 2010. Notwithstanding its demonstrated knowledge of the need to comply with the permit, Respondent was contacted during the March 2010 discharge event to discuss the permit requirements and denied responsibility for the discharge, monitoring, and reporting required by the Permit.

Economic Benefit

Respondent received an economic benefit by failing to take the time to request permission to discharge and monitor the effluent, pay for shipping of samples, and pay for sample analysis of BOD and TSS. Respondent does not have the ability to monitor pH within the required 15 minute holding time, and has received a benefit from not purchasing a field pH meter or rushing pH samples to a lab that can conduct pH analysis within 15 minutes.

Ability to Pay

EPA considered available information under this factor, but will consider any new information Respondent may present regarding Respondent's ability to pay the penalty proposed in this complaint.

Other Matters that Justice may Require

EPA is making no adjustments regarding these factors at this time.

**TERMS OF PAYMENT FOR QUICK RESOLUTION**

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, for the amount, payable to the : "**Environmental**

**Protection Agency,"** to:

**US checks by regular  
US postal service mail:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**Federal Express, Airborne,  
Or other commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**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 "

**On Line Payment:**

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check or wire transfer shall be simultaneously sent to:

Natasha Davis (8ENF-W)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

#### **OPPORTUNITY TO REQUEST A HEARING**

As provided in the Act, you have the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)

U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and a copy must be sent to the following attorney:

David Janik, Enforcement Attorney (8ENF-L)  
U.S. EPA Region 8, Legal Enforcement Program  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6906

**IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.**

**IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE THIRTY (30) CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.**

#### **SETTLEMENT CONFERENCE**

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Senior Enforcement Attorney David J. Janik at (303) 312-6917. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**PUBLIC NOTICE**

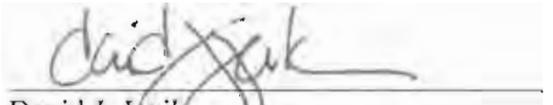
As required by section 309(g)(4) of the Act, 33 U.S.C. §1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202

Date: 9/30/2010

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

Date: 9/30/2010

By:   
David J. Janik  
Senior Enforcement Attorney  
Legal Enforcement Program

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the attached Administrative Order for Compliance and Administrative Complaint were each hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202, and that true copies of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Honorable John Bachman, Mayor  
City of Eagle Butte  
280 South Main  
Eagle Butte, SD 57625

Date: 9/30/2010 By: Judith M McTernan