

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 DEC -4 PM 1:18

IN THE MATTER OF: ) Docket No. **CWA-08-2015-0006**  
)  
Consolidated Charlo-Lake County Water ) **ADMINISTRATIVE ORDER ON**  
and Sewer District, ) **CONSENT**  
)  
Respondent. ) Proceeding under section 309(a) of the  
Clean Water Act, 33 U.S.C. § 1319(a)

EPA REGION VIII  
HEARING CLERK

**INTRODUCTION**

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Consolidated Charlo-Lake County Water and Sewer District (District) to carry out the goals of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

**STATUTORY AUTHORITY**

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the EPA by section 309(a)(3) of the CWA, 33 U.S.C. §1319(a)(3), and as further delegated to the undersigned Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Consent Order and the compliance agreed to herein is based on the findings of violation of sections 301 and/or 402 of the Act, and of any permit condition or limitation implementing such sections of the Act.

**PARTIES BOUND**

This Consent Order shall apply to and be binding upon the EPA and upon the District, its officers, employees, agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this

Consent Order. No change in the ownership or operation of the District's wastewater collection and treatment system shall alter the District's responsibilities under this Consent Order unless the EPA, the District and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, 30 calendar days prior to such transfer, the District shall notify the EPA at the addresses specified in paragraph 17 of the Compliance section of this Consent Order.

### **STATEMENT OF THE PARTIES**

The following FINDINGS OF FACT AND OF VIOLATION are made solely by the EPA. In signing this Consent Order, the District neither admits nor denies the FINDINGS OF FACT AND VIOLATION. As such, and without any admission of liability, the District consents to issuance of this Consent Order and agrees to abide by all of the conditions herein. The District waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the District may have with respect to any issue of fact or law set forth in this Consent Order, including, but not limited to, any right of judicial review of this section 309(a)(3) Consent Order under the Administrative Procedures Act, 5 U.S.C. 701-708. The District further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding enforce this Consent Order or in any action under this Consent Order.

### **FINDINGS OF FACT AND VIOLATION**

1. The District is a "municipality" as defined in section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2, and as such a "person" for purposes of section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. The District owns and/or operates a wastewater treatment facility (Facility) that includes a sanitary sewer collection system and a multi-cell wastewater treatment lagoon serving the Town of Charlo.
3. The Facility is located within the exterior boundaries of the Flathead Indian Reservation in Montana.
4. The Confederated Salish and Kootenai Tribes (Tribes) do not own, manage or control the Facility.
5. The Facility is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
6. The Facility discharges into an unnamed swale that runs to Dublin Gulch, which flows south into Post Creek, a tributary of the Flathead River. The Flathead River and its tributaries constitute “waters of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, are navigable waters within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
7. Wastewater is a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, 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.
9. 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.

10. Effective June 27, 2007, the EPA issued the District NPDES Permit no. MT0022551 (Permit) under the authority of section 402 of the Act, 33 U.S.C. § 1342. The EPA re-issued the District the Permit on August 1, 2012, which remains in effect.

11. Part 1.3.2. of the Permit requires the District to monitor and record monthly for specified constituents at a discharge location authorized by the Permit, Outfall 001. If no discharge occurs during the entire monitoring period, the District is required by the Permit to indicate on the Discharge Monitoring Report (DMR) form that no discharge or overflow occurred. DMRs are due to the EPA postmarked no later than the 28<sup>th</sup> day of the month following the completed reporting period.

12. The District failed to submit timely DMRs to EPA for the following months: July 2009, which was not submitted until September 21, 2009; August 2009, which has never been submitted; September through December 2009, which were not submitted until March 29, 2010; January 2010, which was not submitted until March 25, 2010; March 2010, which was not submitted until May 5, 2010; May through December 2010, which were not submitted until February 17, 2011; February 2011, which was not submitted until April 4, 2011; April through December 2011, which were not submitted until March 19, 2012; January 2012, which was not submitted until March 19, 2012; March through November 2012, which were not submitted until December 31, 2013; April 2013, which was never submitted; May 2013, which was not submitted until July 9, 2013; October 2013, which was not submitted until December 6, 2013; December 2013, which was not submitted until February 28, 2014; and, February and March 2014, which were not submitted until May 15, 2014.

13. The District's failure to submit timely DMRs to EPA for the timeframes specified in paragraph 12, above, constitutes violations of the Permit and the Act.

## ORDER

Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), and considering that the District has created a new standard operating procedure for submitting timely DMRs, the EPA finds that the following compliance measures are in the best interest of the parties and the affected public.

14. Effective immediately, the District shall monitor any discharge in accordance with section 1.3.2 of the Permit.

15. By the 28<sup>th</sup> day of the month following the effective date of this Consent Order and each month thereafter, the District shall scan and send electronically to the persons identified in paragraphs 17 and 18, below, full and complete signed copies of the DMRs as required by section 1.3.2 of the Permit. If no discharge occurs during the entire monitoring period, it shall be stated on the DMR that no discharge or overflow occurred.

16. Effective immediately, the District shall retain and make available to the EPA upon request all paper, and electronic if available, monthly DMRs dating back 3 years. Other records shall be kept for the duration specified in the Permit.

17. All notices and reports to the EPA required by this Consent Order shall be given to:

David Rise  
U.S. EPA Region 8 Montana Office  
10 W 15 Street Suite 3200  
Helena, MT 59626  
[rise.david@epa.gov](mailto:rise.david@epa.gov)

18. All notices and reports to the Tribes required by this Consent Order shall be given to:

Clint Folden, Environmental Protection Division  
Confederated Salish and Kootenai Tribes  
P.O. Box 278  
Pablo, MT 59855  
[clintf@cslt.org](mailto:clintf@cslt.org)

19. All reports and information required by this Consent Order shall include the following certification statement, signed and dated by either a principal executive officer or a ranking elected official for Respondent, or a duly authorized representative of such person:

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

#### **STIPULATED PENALTIES**

26. The District agrees to pay stipulated penalties to the EPA for violations after the effective date of this Consent Order as follows.

a. Failure to submit timely DMRs - If the District fails to submit DMRs to EPA by the 28<sup>th</sup> day of the following month, the District shall pay beginning on the first day that performance is delinquent a stipulated penalty of \$10 per day each day until the DMR is received by the EPA or up to 30 days, whichever occurs first. In the event the DMR is not received by the EPA within 30 days of its due date, it will be treated as failure to submit a DMR and assessed a \$300 stipulated penalty for that month as provided in subsection b, below.

b. Failure to submit DMRs - If the District fails to submit a monthly DMR to EPA, the District shall pay a stipulated penalty of \$300.

27. Stipulated penalties shall become owing upon written demand by the EPA and are due on or before the 15<sup>th</sup> of the month following the month the written demand is received.

Payment shall be made as follows:

a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Consent Order. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, the address for which is given below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. Payment shall be made by cashier's or certified check, including the name and docket number of this case, for the amount due, payable to "Treasurer, United States of America," as follows:

**If sent by regular U.S. mail:**

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

**If sent by any commercial  
overnight carrier:**

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

**If sent by wire transfer:**

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.

c. Notice of payment shall be provided concurrently to those persons identified in paragraphs 17 and 18, above.

28. If the District fails to pay stipulated penalties according to the terms of this Consent Order, the EPA shall be entitled to collect interest on such penalties, as provided for in 31 U.S.C. § 3717.

29. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Order.

**GENERAL PROVISIONS**

30. Issuance of this Consent Order shall not be deemed an election by the EPA to forego any

civil or criminal action to seek civil penalties, fines, or other appropriate relief under the Act for the violations set forth in the Findings.

31. Issuance of this Consent Order does not otherwise affect the EPA's ability to enforce or implement the Act.

32. Failure to comply with the terms of this Consent Order may result in the District's liability for civil penalties for each violation of up to \$37,500 per day under section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. part 19. The U.S. District Court may impose such penalties if the court determines that you have violated the Act and failed to comply with the terms of the Consent Order.

33. This Consent Order shall become effective upon execution by both parties and filing with the EPA Region 8 Hearing Clerk.

34. If the District complies with this Consent Order and section 1.3.2 of the Permit by submitting timely and complete DMRs, the EPA may close the Consent Order without further action.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8.**

Date: 12-2-2014

  
\_\_\_\_\_  
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice

**CONSOLIDATED CHARLO-LAKE  
COUNTY WATER AND SEWER  
DISTRICT.**

Date: 11/06/2014



Leila Roberts  
Secretary-Treasurer  
Consolidated Charlo-Lake County Water  
and Sewer District