



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region08

JUN - 8 2015

Ref: 8ENF-L

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

The Honorable Greg Norgaard, Mayor  
City of Poplar  
406 2<sup>nd</sup> Avenue West  
Poplar, Montana 59255

Re: Findings of Violation and Order for Compliance, In the Matter of the City of Poplar, Docket  
No. **CWA-08-2015-0017**

Dear Mayor Norgaard:

The U.S. Environmental Protection Agency (EPA) is issuing the City of Poplar (City) the enclosed Findings of Violation and Order for Compliance (Order) for alleged violations of the Clean Water Act (Act) and National Pollutant Discharge Elimination System Permit No. MT0030597 (Permit) at the City's Wastewater Treatment Facility (Facility). The EPA is authorized to issue this Order pursuant to section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary for the City to achieve compliance with its Permit and the Act. Specifically, the Order requires that the City cease the sanitary sewer overflows (SSOs) and unauthorized discharges of sewage into the Poplar River from the Facility's collection system by immediately installing new or repairing existing lift station pumps. Further, the Order requires the City to respond to all lift station or sewage pump station failures until the lift station improvements are complete by temporarily pumping down the station and properly disposing of the contents as described in the City's Operation Management and Emergency Response Plan. Pursuant to the Order, the City is required to comply with the Permit's operation and maintenance, reporting and notification requirements. The City also is required by the Order to retain a certified wastewater operator for the Facility.

The Act authorizes the EPA to take appropriate enforcement actions necessary to secure prompt compliance with the Act. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil, criminal or administrative action. (See 33 U.S.C. § 1319, subsections (b), (c), (d), and (g).) Please be advised that issuance of this Order does not preclude civil or criminal U.S. District Court action or EPA administrative penalty proceedings for the violations cited in the Order. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet is enclosed. The SBREFA sheet notifies small entities of their right to comment on regulatory enforcement activities

and provides information on compliance assistance resources and tools available to small businesses. SBREFA does not eliminate the City's responsibility to comply with the Act or to respond to this Order.

If you have any questions relating to technical issues raised in the Order, please contact Ms. Monia Ben-Khaled at (303) 312-6209. Any questions relating to legal issues should be directed to Ms. Amy Swanson at (303) 312-6906 or by email at [swanson.amy@epa.gov](mailto:swanson.amy@epa.gov). Thank you for your attention to this matter.

Sincerely,



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

#### Enclosures

1. Findings of Violation and Order for Compliance
2. Small Business Regulatory Enforcement and Fairness Act Information Sheet

cc: Mr. Shane Halverson, Director of Public Works  
City of Poplar

The Honorable A.T. Stafne, Chairman  
Ms. Deb Madison, Environmental Director  
Assiniboine and Sioux Tribes

Mr. Quentin Allen, Engineer  
Indian Health Service



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2015 JUN -8 AM 8:54

IN THE MATTER OF:

The City of Poplar, Montana,  
Wastewater Treatment Facility,

Respondent.

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Docket No. **CWA-08-2015-0017**

**ADMINISTRATIVE ORDER  
FOR COMPLIANCE**

Proceeding under Section 309(a) of the  
Clean Water Act, 33 U.S.C. § 1319(a)

FILED  
EPA REGION VIII  
HEARING CLERK

**STATUTORY AUTHORITY**

This Administrative Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of, *inter alia*, sections 301 or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. This authority has been properly delegated to the undersigned official.

**FINDINGS OF FACT AND LAW**

1. In order to restore and maintain the integrity of the Nation’s waters, section 301(a) of the Act prohibits the discharge of any pollutant by any person into navigable waters, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).
2. Section 402 of the Act establishes a National Pollutant Discharge Elimination System (NPDES) program, which is administered by the EPA or a state with an approved permit program. The NPDES program authorizes the permitting authority to issue permits allowing discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.
3. The City of Poplar (City) is a “municipality” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. §122.2.

4. The City 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. The City owns and/or operates the City of Poplar Wastewater Treatment Facility (Facility) serving the City of Poplar residents that includes a sanitary sewer collection system, a lift station and a mechanical plant consisting of an oxidation ditch, clarifier, aerated sludge digester, sludge drying beds and ultraviolet lights for effluent disinfection located on tribal land within the exterior boundaries of the Fort Peck Reservation, Roosevelt County, Montana.
6. The City is incorporated pursuant to the laws of the State of Montana within the exterior boundaries of the Fort Peck Reservation.
7. The Assiniboine and Sioux Tribes (Tribes) do not own, manage, operate, or control the Facility.
8. The Facility is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
9. The Facility discharges effluent to a ditch leading to the Missouri River, an interstate water that has been determined to be a jurisdictional water of the U.S. by the U.S. Army Corps of Engineers. The Missouri River and its tributaries are “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).
10. Wastewater is a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), in relevant parts, prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by a permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342.

12. Pursuant to section 402 of the Act, 33 U.S.C. § 1342, the EPA issued NPDES Permit No. MT0030597 (Permit) effective October 1, 2011, authorizing the City to discharge treated wastewater from the Facility to a ditch leading to the Missouri River in accordance with the conditions set forth in the Permit. The Permit expires September 30, 2016.

13. The City is subject to the requirements of the Act, the Permit and the EPA's regulations implementing the Act.

14. Part 1.2 of the Permit provides that the authorization to discharge is limited to discharges from the outfall (Outfall #001), which is a pipe from the clarifier to a ditch leading to the Missouri River at approximately N 48.10530 Latitude W 105.18858 Longitude.

15. Part 2.8.1 of the Permit requires the City to report any noncompliance which may endanger health or the environment to the EPA and the Tribes within 24 hours of becoming aware of the circumstances.

16. Part 2.8.2 of the Permit requires the City to report, in part, any unauthorized discharge by telephone to the EPA and the Tribes the first workday following the day of becoming aware of the circumstances.

17. Part 2.8.3 of the Permit requires the City within five days of becoming aware of the circumstances to provide EPA and the Tribes with a written submission containing (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.

18. Part 3.5 of the Permit requires the City to properly operate and maintain at all times all facilities and systems of treatment and control (and related appurtenances) which are installed or

used by the City to achieve compliance with the conditions of the Permit. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the City only when the operation is necessary to achieve compliance with the conditions of the permit. However, the City is required at a minimum to operate one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

19. Part 1.3.2 of the Permit requires the City to monitor and record monthly for specified constituents at Outfall 001. If no discharge occurs during the entire monitoring period, the City is required by the Permit to indicate on the Discharge Monitoring Report (DMR) form that no discharge or overflow occurred. (Permit 1.3.2.2).

20. Part 2.4 of the Permit provides that effluent monitoring results obtained during the previous month shall be summarized and reported on one DMR form, postmarked no later than the 28<sup>th</sup> day of the month following the completed reporting period. If no discharge occurs during the reporting period, “no discharge” shall be reported.

### **FINDINGS OF VIOLATION**

21. On September 17, 2014, Indian Health Service (IHS) conducted a site visit of the Facility’s treatment plant and determined that no maintenance had been completed, the plant was in a state of major disrepair, and that little to no treatment was occurring before the wastewater was discharged to the Missouri River, in violation of Part 3.5 of the Permit.

22. The Facility’s wastewater exceeded the Permit’s effluent limits for one or more of the following monitored parameters: biochemical oxygen demand, E. Coli, fecal coliform, total suspended solids and pH, in violation of Part 1.3.1 of the Permit. The exceedances were reported for monitoring periods from May 2012 to September 2014.

23. On October 9, 2014, the EPA was notified by the Tribes of a sanitary sewer overflow (SSO) from the Facility's collection system that discharged from a manhole at the south end of the City approximately 100 feet east of A&S Industries. Sewage flowed from the manhole onto the ground and into a storm drain to the Poplar River. Sewage was observed in the Poplar River where the storm drain entered. The SSO on October 9, 2014, constitutes a violation of Part 1.2 of the Permit and section 301 of the Act.

24. The City failed to report to the EPA the SSO on October 9, 2014, in violation of Parts 2.8.1 and 2.8.2 of the Permit.

25. The City failed to provide the EPA with a written submission within 5 days of becoming aware of the SSO on October 9, 2014, in violation of Part 2.8.3 of the Permit.

26. On November 17, 2014, the EPA was notified by the Tribes of an SSO from the Facility's collection system that discharged into the Poplar River, in violation of Part 1.2 of the Permit and section 301 of the Act.

27. The City failed to report to the EPA the SSO on November 17, 2014, in violation of Parts 2.8.1 and 2.8.2 of the Permit.

28. The City failed to provide the EPA with a written submission within 5 days of becoming aware of the SSO on November 17, 2014, in violation of Part 2.8.3 of the Permit.

29. The City failed to submit timely DMRs to the EPA for the months of December 2012, November and December 2013, June, July and August 2014, and each consecutive month from October 2014 through the filing date of this Order in violation of Parts 1.3.2 and 2.4 of the Permit.

## ORDER

30. Within 10 days of receipt of the Order, the City shall submit a written notice to the EPA of intent to comply with the requirements of this Order.

31. Effective immediately, the City shall comply with all requirements of the Permit including, but not limited to, Part 1.2 (discharge only from authorized discharge point); Part 1.3.1 (effluent limitations); Part 2.8 (noncompliance reporting); and Part 3.5 (proper operation and maintenance).

32. Within 30 days of receipt of the Order, the City shall either provide the EPA with information verifying that the pumps have been repaired and the lift station is operable or, alternatively, submit to the EPA for review a plan and schedule for repairing or replacing the lift station pumps. The City shall include an interim plan for pumping or otherwise removing and disposing of waste from the Facility in the event of additional lift station failures before the permanent improvements or repairs to the lift station are implemented. The City may seek assistance from a contractor, consultant, or federal agency other than EPA to design, fund and/or perform the work but remains solely liable for complying with this requirement.

33. Within 30 days of the Order, the City shall submit to the EPA for review a plan, checklist and schedule for regularly inspecting and maintaining the Facility's lift station and pumps. The plan shall include back-up procedures and equipment to be used to address future lift station failures. The City shall provide copies of the checklists to the EPA upon request.

34. Within 60 days of the Order, the City shall retain a certified operator for the Facility. The City may satisfy this requirement by having an existing operator take and successfully pass the certification exam or hiring externally.

35. All documents required by this Order to be submitted to the EPA and the Tribes shall be

submitted by mail or email to the following addresses:

Monia Ben Khaled (8ENF-W-NP)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
[Ben-khaled.moniam@epa.gov](mailto:Ben-khaled.moniam@epa.gov)

Deb Madison, Environmental Director  
Assiniboine and Sioux Tribes  
P.O. Box 1027  
Poplar, MT 59255  
[2horses@nemontel.net](mailto:2horses@nemontel.net)

36. All submissions by the City to the EPA pursuant to the requirements of this Order shall include the following certification statement signed by an authorized official. 40 C.F.R. § 122.22.

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.

### **GENERAL PROVISIONS**

37. Any failure to comply with the requirements of this Order shall constitute a violation of the Order and may subject the City to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.

38. This Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or a permit. Section 309(c)

of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

39. Nothing in this Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in the Order or to relieve the City from responsibilities, liabilities or penalties pursuant to any applicable federal or tribal law or regulation.

40. The City may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706 sets forth the scope of such review.

41. This Order shall be effective upon receipt by the City and shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

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

Date: \_\_\_\_\_

6/4/2015



Suzanne J. Behan  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice

CERTIFICATE OF SERVICE

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

The Honorable Greg Norgaard, Mayor  
City of Poplar  
406 2<sup>nd</sup> Avenue West  
Poplar, Montana 59255

Date: 6/8/15

By: Jean Dethy



## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Small Business Programs

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### EPA's Compliance Assistance Homepage

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrf.org](http://www.nmfrf.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### Transportation

[www.tercenter.org](http://www.tercenter.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines, Helplines and Clearinghouses

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Superfund, TRI, EPCRA, RMP and Oil Information Center

[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center

**Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

### Safe Drinking Water Hotline -

[www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791

### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

### Toxic Substances Control Act (TSCA) Hotline

[tsc-hotline@epa.gov](mailto:tsc-hotline@epa.gov) or 1-202-554-1404

### Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

### Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### EPA's Tribal Portal

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### EPA's Small Business Compliance Policy

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

### EPA's Audit Policy

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*