

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 JUN 30 PM 2:19

In the Matter of:)	ADMINISTRATIVE ORDER
)	FOR COMPLIANCE
Paul Stelter, doing business as)	
Alamedas Hot Springs Retreat)	Docket No. CWA-08-2008-0031
Hot Springs, MT)	
)	
Respondent)	

This Administrative Order for Compliance ("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 Order is also issued pursuant to section 308(a) of the Clean Water Act, 33 U.S.C. §1318(a), which authorizes the Administrator of the EPA to require reports necessary to determine compliance. These authorities have been delegated to the undersigned official.

BACKGROUND

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. Paul Stelter (the "Respondent") is an individual 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.
4. The Respondent owns and operates a facility known as the Alamedas Hot Springs Retreat in Hot Springs, Montana.
5. Effective November 1, 2006, the EPA issued NPDES Permit No. MT-0030694 (the "Permit"), authorizing the Respondent to discharge treated effluent from the Respondent's wastewater treatment facility (the "Facility") to a tributary of Hot Springs Creek, in accordance with the conditions set forth in the Permit.
6. The Permit was modified on October 19, 2007, to change the discharge point from one tributary of Hot Springs Creek to another tributary of Hot Springs Creek.
7. The tributaries of Hot Springs Creek into which the Respondent has been authorized to discharge are each a "navigable water" and part of the "waters of the United States," as those terms are defined in section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §122.2, respectively.
8. The Facility is located on the Flathead Indian Reservation in northwestern Montana.
9. The Confederated Salish and Kootenai Tribes ("Tribes") do not own, manage, or control the Facility, according to a June 4, 2008, letter from James H. Steele, Jr., Chairman of the Tribal Council, to David Rise, US EPA Montana Office.

10. The Respondent is subject to the requirements of the Act, the Permit, and the EPA's regulations implementing the Act.
11. Section 1.3.2 of the Permit requires the Respondent to monitor the Facility's effluent monthly for flow and total suspended solids ("TSS"). Section 1.3.2 of the Permit required the Respondent to monitor monthly for fecal coliform for the first year after the effective date of the Permit.
12. Section 2.4 of the Permit requires the Respondent to submit effluent monitoring results for each quarter to the EPA and the Tribes, 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 28th day of the month following the end of the completed monitoring period.
13. Sections 1.3.2 and 2.4 of the Permit require the Respondent to submit a DMR to EPA and the Tribes stating "no discharge" for any monitoring period during which no discharge occurs.
14. Section 1.3.2 of the Permit requires the Respondent to sign and certify DMRs according to the requirements of part 4 of the Permit.
15. Section 4.7.4, in part 4, of the Permit requires the Respondent to make the following certification when submitting DMRs:

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.

16. By letter dated October 18, 2006, EPA transmitted the Permit to the Respondent, enclosing blank DMRs for six months. EPA's letter stated that DMRs were due by the 28th of the month following the reporting period and that if there was no discharge, the Respondent was required to mark the "No Discharge" box in the upper right corner of the DMR.
17. Respondent submitted DMRs to EPA for the months of November 2006 and December 2006, indicating "No Discharge," but failing to sign or certify the DMRs.
18. By letter dated November 22, 2006, EPA provided the Respondent with computer generated DMR forms, to be used beginning the first quarter of 2007.
19. By letter dated August 25, 2008, the EPA requested DMRs from the Respondent for 2007 and the first half of 2008. The EPA's letter erroneously referred to a monthly DMR requirement; as indicated above, the reporting requirement is quarterly.
20. After receiving EPA's August 25, 2008, letter, the Respondent submitted DMRs to EPA for the first through fourth quarters of 2007 and the first through third quarters of 2008. These DMRs were provided to EPA in an envelope postmarked on September 15, 2008. All but the third quarter 2008 DMR indicated "no discharge." Only the third quarter 2008 DMR had been signed and certified.
21. The third quarter 2008 DMR included a flow measurement but no other data. The third quarter of 2008 had not ended as of the time the DMR for that quarter was submitted. Thus the DMR was not yet due.

22. Section 2.9 of the Permit requires the 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 EPA and the Tribes at the time that monitoring reports are submitted, with each report by the Respondent to 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.

VIOLATIONS

23. For all four quarters of 2007 and the first two quarters of 2008, the Respondent failed to submit DMRs to the EPA by the required deadlines and with the required signatures and certifications, in violation of sections 2.4 and 4.7.4 of the Permit.
24. For the fourth quarter of 2006, the Respondent failed to submit a DMR to the EPA with the required signature and certification, in violation of sections 2.4 and 4.7.4 of the Permit.
25. The Respondent failed to provide EPA with any notification of the Respondent's noncompliance with conditions of the Permit, in violation of section 2.9 of the Permit.

ORDER

1. Effective immediately, the Respondent shall submit quarterly DMRs to the EPA and the Tribes, using EPA Form No. 3320-1 and postmarking the DMR for each month no later than the 28th day of the month following the completed monitoring period, as required by section 2.4 of

the Permit. Each DMR shall include monitoring results for flow, total suspended solids, and fecal coliform.

2. The Respondent shall submit a corrected DMR to the EPA and the Tribes for the third quarter of 2008, using EPA Form No. 3320-1 and postmarking the DMR no later than October 28, 2008. The corrected DMR shall include monitoring results for flow, total suspended solids, and fecal coliform for the third quarter of 2008.

3. No later than ten days after receiving this Order, the Respondent shall submit to the EPA and the Tribes any monitoring results for the Facility that the Respondent has not previously submitted to EPA. The submitted results shall include all reports from each contract laboratory and any laboratory bench sheets for any analysis done in-house.

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

David Rise (8MO)
U.S. EPA Region 8, Montana Office
10 W. 15th Street, Suite 3200
Helena, MT 59626

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

Confederated Salish and Kootenai Tribes
Environmental Protection Division
301 Main St.
Polson, MT 59860

6. All reports and information required by this Order shall include the following certification statement, signed and dated by the Respondent:

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.

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

8. 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 as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. §1319(d), authorizes the imposition of civil penalties of up to \$32,500 per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. §1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

9. Nothing in this Order shall be construed to preclude further action under section 309 of the Act for those violations cited herein or relieve the Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

Dated this 30th day of September, 2008.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8



Andrew M. Gaydosh
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, and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Paul Stelter
Alamedas Hot Springs Retreat
P.O. Box 716
Hot Springs, MT 59845

Date: 9 | 30 | 08

By: Judith McTernan
Judith McTernan