



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2019 MAY 24 PM 3:00

FILED
EPA REGION VIII
HEARING CLERK

Ref: 8ENF-W-NW

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 24 2019

The Honorable John Grainger, Mayor
City of Poplar
406 2nd Avenue West
Poplar, Montana 59255

Re: Findings of Violation and Order for Compliance, In the Matter of the City of Poplar,
Docket No. **CWA-08-2019-0003**

Dear Mayor Grainger:

The U.S. Environmental Protection Agency (EPA) is issuing the City of Poplar (City) the enclosed Administrative Order for Compliance (Order) for alleged violations of the Clean Water Act (Act) 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).

On May 23, 2019, EPA inspectors conducted an inspection of the Facility. The EPA inspectors determined the Facility was operating with little to no pollutant reduction occurring before wastewater was discharged to the Missouri River. The EPA inspectors observed solids and other evidence of untreated sewage at the outfall to the Missouri River. Information provided by the Facility representative to the EPA inspectors indicated the Facility has not been operating for at least a year.

In addition to violating the Act, such a lack of proper operation and maintenance is unacceptable, especially when it results in such a significant threat to public health. Untreated sewage typically contains bacteria, viruses, protozoa (parasitic organisms), helminths (intestinal worms), and inhalable molds and fungi. As a result, exposure to discharges of untreated sewage may cause diseases ranging in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life threatening ailments such as cholera, dysentery, infections, hepatitis, and severe gastroenteritis.

The Order requires that the City immediately cease discharging from the Facility's non-operating treatment plant and submit a plan to the EPA for preventing unpermitted discharges and treating any discharges that do occur.

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 the filing of a civil or criminal action in U.S. District Court or an EPA administrative penalty proceeding 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.

If you have any questions relating to technical issues raised in the Order, please contact Akash Johnson, Environmental Engineer, at (303) 312-6067 or johnson.akash@epa.gov. Any questions from counsel for the City should be directed to Peggy Livingston, Senior Assistant Regional Counsel, at (303) 312-6858 or livingston.peggy@epa.gov. Thank you for your prompt attention to this urgent matter.

Sincerely,



Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

Enclosures

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

cc:

Shane Halverson, Director of Public Works, City of Poplar (email)
Laura Christofferson, Outside Counsel, City of Poplar (email)
The Honorable Floyd Azure, Chairman, Assiniboine and Sioux Tribes
Martina Wilson, Environmental Director, Assiniboine and Sioux Tribes (email)
Quentin Allen, Engineer, IHS (email)
Steve Troendle, Director of Community Programs, USDA-RD (email)
Ryan Kopp, Project Manager, Interstate Engineering (email)

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.

Office of Small and Disadvantaged Business Utilization (OSDBU)

www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

www.epa.gov/compliance

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

Compliance Assistance Centers

www.complianceassistance.net

EPA sponsored 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

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Surface Finishing

<http://www.sterc.org>

Paints and Coatings

www.paintcenter.org

Printing

www.pneac.org

Ports

www.portcompliance.org

Transportation

www.tercenter.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 1-919-541-0800

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

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 1-734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills - <http://nrc.uscg.mil> or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) -

www.epa.gov/p2/pollution-prevention-resources#ppic or 1-202-566-0799

Safe Drinking Water Hotline -

www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

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

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

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

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

State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states/list>

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

The Portal helps users locate tribal-related information within EPA and other federal agencies.

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

www.epa.gov/enforcement/small-businesses-and-enforcement

EPA's Audit Policy

www.epa.gov/compliance/epas-audit-policy

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.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2019 MAY 24 PM 3:00

IN THE MATTER OF:)
)
The City of Poplar, Montana)
)
)
Respondent.)
)

Docket No. **CWA-08-2019-0003**

FILED
EPA REGION VIII
HEARING CLERK

**ADMINISTRATIVE ORDER
FOR COMPLIANCE**

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*, section 301 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, unless it is in compliance with certain other provisions of the Act. 33 U.S.C. § 1311(a).
2. Section 402 of the Act establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA may issue permits allowing discharges of pollutants, 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. The Facility includes a sanitary sewer collection system, a lift station, and a mechanical treatment plant (Treatment Plant) consisting of an oxidation ditch, clarifier, aerated sludge digester, sludge drying beds, and ultraviolet lights with a backup chlorination system for effluent disinfection. The Facility is located on tribal land within the exterior boundaries of the Fort Peck Reservation, Roosevelt County, Montana.
6. The City also owns and/or operates a largely unused wastewater treatment lagoon (Lagoon) adjacent to and west of the Treatment Plant.
7. The Assiniboine and Sioux Tribes (Tribes) do not own, manage, operate, or control the Facility.
8. The Facility discharges wastewater via one or more outfalls to the Missouri River.
9. The Missouri River is an interstate, traditionally navigable water. The Missouri River is a “water of the United States” within the meaning of 40 C.F.R. § 122.2 and therefore a “navigable water” 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. Each outfall at the Facility is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
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 in accordance with the conditions set forth in the

Permit. The Permit expired on September 30, 2016 and has not been renewed or administratively extended.

13. At no time since September 30, 2016 has the Facility been authorized by any NPDES permit or by any provision of the Act to discharge any pollutants.
14. The Facility has been continuously or intermittently discharging wastewater to the Missouri River since September 30, 2016.
15. The Facility's discharge of wastewater to the Missouri River is a "discharge of a pollutant" within the meaning of section 502(12) of the Act, 33 U.S.C. § 1362(12).
16. On May 23, 2019, EPA inspectors conducted a NPDES inspection of the Facility.
17. The EPA inspectors determined the Treatment Plant's treatment units were not operating and were not treating wastewater, with little to no pollutant reduction occurring before wastewater was discharged to the Missouri River.
18. The EPA inspectors observed solids and other evidence of untreated sewage at the Facility's outfall to the Missouri River.
19. Information provided by the Facility representative to the EPA inspectors indicated the Treatment Plant's treatment units have not been operational for at least a year.

FINDINGS OF VIOLATION

20. Each day on which City has discharged pollutants from the Facility since September 30, 2016 constitutes a violation of section 301(a) of the Act.

ORDER

21. Effective immediately, and no later than 24 hours after receiving this Order, the City shall submit a written notice to the EPA by email and U.S. mail, with a copy to the Tribes by U.S. mail, of the City's intent to comply with the requirements of this Order.

22. Effective immediately, and no later than 24 hours after receiving this Order, the City shall cease discharging wastewater from all point sources, including but not limited to the Facility and the Lagoon.
23. Effective immediately, and no later than 24 hours after receiving this Order, the City shall divert all wastewater from the Treatment Plant into the Lagoon.
24. Within 15 days of receiving this Order, the City shall provide to the EPA a plan describing how the City will prevent unpermitted discharges of wastewater and provide treatment for any future discharge. Any plan to provide wastewater treatment will include a plan for treatment of, at a minimum, biochemical oxygen demand, total suspended solids, pathogens (such as *E. coli*), oil and grease, and pH, and provide the expected concentration of the pollutants upon any discharge. The City may seek assistance from any contractor, consultant, or federal agency other than the EPA to design, fund, and/or perform any work included in developing or implementing any such plans but remains solely liable for complying with this Order. The EPA may require modifications to any such plan and schedule.
25. All documents required by this Order to be submitted to the EPA and the Tribes shall be submitted to the following addresses:

Akash Johnson
U.S. EPA Region 8
By U.S. mail: 8ENF-W-NW
1595 Wynkoop Street
Denver, CO 80202-1129

With a copy sent to:

Akash Johnson
U.S. EPA Region 8
By e-mail: johnson.akash@epa.gov

Martina Wilson, Environmental Director
Assiniboine and Sioux Tribes
P.O. Box 1027
Poplar, MT 59255-1027

26. All submissions by the City to the EPA and the Tribes pursuant to 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

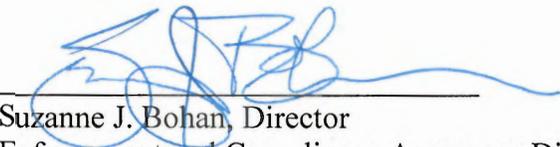
27. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the City to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.
28. This Order does not constitute a permit or a waiver or election by the EPA to forego any civil 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 \$54,833 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.
29. 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 this Order or to relieve the

City from responsibilities, liabilities or penalties pursuant to any applicable federal or tribal law or regulation.

30. 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.
31. This Order shall be effective upon receipt by the City and shall remain in effect until a written notice of termination or modification is issued by an authorized representative of the EPA.

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

Date: 5/24/2019



Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 29, 2019,

- (1) the original and a copy of the preceding Administrative Order for Compliance were hand carried to the Regional Hearing Clerk, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202; and
- (2) a copy of the preceding Administrative Order for Compliance was transmitted by certified mail, return receipt requested to:

The Honorable John Grainger, Mayor
City of Poplar
406 2nd Avenue West
Poplar, Montana 59255
Certified Mail No. 7012-2210-0000-5373-6874

By: Linda M. White
Date: 5/29/19

The undersigned hereby certifies that on May 24, 2019, a copy of the preceding Administrative Order for Compliance was transmitted by e-mail to the Honorable John Grainger, Mayor of the City of Poplar, Montana, at jqgr1@yahoo.com.

By: [Signature]
Date: 5/28/19

CERTIFICATE OF SERVICE

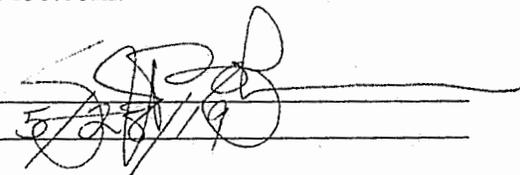
The undersigned hereby certifies that on May 29, 2019,

- (1) the original and a copy of the preceding Administrative Order for Compliance were hand carried to the Regional Hearing Clerk, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202; and
- (2) a copy of the preceding Administrative Order for Compliance was transmitted by certified mail, return receipt requested to:

The Honorable John Grainger, Mayor
City of Poplar
406 2nd Avenue West
Poplar, Montana 59255
Certified Mail No. 7012-2210-0000-5373-6874

By: Linda M. White
Date: 5/29/19

The undersigned hereby certifies that on May 24, 2019, a copy of the preceding Administrative Order for Compliance was transmitted by e-mail to the Honorable John Grainger, Mayor of the City of Poplar, Montana, at jqgr1@yahoo.com.

By: 
Date: 5/28/19