

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 APR -4 AM 11:14

IN THE MATTER OF:)
)
The City of Rock Springs, Wyoming,)
)
NPDES Permit No. WY-0022357,)
)
Respondent.)

FILED
EPA REGION VIII
HEARING CLERK

Docket No. CWA-08-2013-0009

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (Complainant or EPA),
and Respondent, City of Rock Springs (Respondent), by their undersigned representatives,
hereby consent and agree as follows:

AUTHORITY

1. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

2. Complainant has jurisdiction over this matter pursuant to section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g), which authorizes the EPA Administrator to make findings and to assess civil penalties for violations of sections 301, 302, 306, 307, 308, 318, and 405 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328, or 1345, or any permit condition or limitation implementing any such sections of the Act in a permit issued by the Administrator or by a State under section 402 of the Act.

GENERAL ALLEGATIONS

3. The City of Rock Springs (Respondent) 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.
4. The City of Rock Springs 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 of Rock Springs owns and operates a wastewater treatment facility located at SE Section 5, T18N, R105W, Sweetwater County, Wyoming. This facility is a publicly owned pretreatment works (POTW) as that term is defined under 40 C.F.R. § 403.3.
6. The City of Rock Springs’ POTW discharges treated wastewater into Bitter Creek.
7. The facility is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
8. Wastewater is a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
9. Bitter Creek, a tributary of the Green River, is a “water of the United States” within the meaning of 40 C.F.R. § 122.2 and a “navigable water” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
10. 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.
11. The State of Wyoming issued NPDES Permit Number WY-0022357 (Permit), effective June 1, 2005, which authorizes the City of Rock Springs to discharge from the POTW into Bitter Creek in accordance with section 402 of the Act, 33, U.S.C. § 1342. The Permit was reissued on March 11, 2011, modified on November 14, 2011, and expires on March 31, 2015.

12. On March 8, 2011, the EPA issued the City of Rock Springs a Findings of Violation and Order for Compliance (Order) pursuant to section 309(a)(3) of the Act, 33 U.S.C. 1319(a)(3), alleging violations at five of the POTW's Industrial Users (IUs). The Order also alleged violations at three of the five IUs that are Significant Industrial Users (SIUs). Specifically, the Order alleges the following IU and SIU violations: failure to sample each SIU at least once per year (40 C.F. R. § 403.8(f)(2)(v) and Permit condition III.B.1.b); failure to publish IUs in Significant non-compliance (40 C.F. R. § 403.8(f)(2)(viii) and Permit condition III.B.4); failure to control the SIU through an individual permit (40 C.F. R. § 403.8(f)(1)(iii) and Permit condition III.B.1.f); failure to implement procedures to investigate instances of noncompliance (40 C.F. R. § 403.8(f)(1) and Permit condition III.B.1.d); and failure to enforce according to the POTW's Enforcement Response Plan (ERP) (40 C.F. R. § 403.8(f)(5) and Permit conditions III.B.1.e and i).

13. The City of Rock Springs has returned the POTW to compliance with the pretreatment program violations alleged in the Order by fully complying with the Order section included therein.

14. 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.

ALLEGATIONS

Count 1

(Failure to Sample Each Significant Industrial User at Least Once per Year)

15. Paragraphs 1 – 14 are incorporated herein.

16. Pursuant to 40 C.F.R. § 403.8(f)(2)(v) and Permit condition III.B.1.b, the City of Rock Springs is required to sample each SIU within the meaning of 40 C.F.R. § 403.3(v) at least once

per calendar year.

17. The City of Rock Springs failed to sample the following SIUs in 2008: Tri-Mac Transportation, Halliburton Energy Services, and Sweetwater County Memorial Hospital.

18. The City of Rock Springs's failure to sample three SIUs in 2008 constitutes separate violations of 40 C.F.R. § 403.8(f)(2)(v) and Permit condition III.B.1.b.

Count II

(Failure to Publish Industrial Users in Significant Non-Compliance)

19. Paragraphs 1 – 18 are incorporated herein.

20. Pursuant to 40 C.F.R. § 403.8(f)(2)(viii) and Permit condition III.B.4, the City of Rock Springs is required to annually publish in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction served by the POTW a list of IUs within the meaning of 40 C.F.R. § 403.3(j) which at any time during the previous 12 months were in Significant Non-Compliance if the IU's violation(s) meets one or more of the criteria listed in 40 C.F.R. § 403.8(f)(2)(viii)(A-H).

21. Sweetwater County Memorial Hospital was in Significant Non-Compliance within the meaning of 40 C.F.R. § 403.8(f)(2)(viii) with the Pretreatment Standards and requirements for the first quarter of 2009.

22. The City of Rock Springs failed to publish Sweetwater County Memorial Hospital for being in Significant Non-Compliance for the first quarter of 2009 until September 24, 2010.

23. The City of Rock Springs' failure to publish Sweetwater County Memorial Hospital for Significant Non-Compliance within 12 months of the Significant Noncompliance period constitutes a violation of 40 C.F.R. § 403.8(f)(2)(viii) and Permit condition III.B.4.

Count III

(Failure to Control Significant Industrial User Through Individual Permit)

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24. Paragraphs 1 – 23 are incorporated herein.
25. Pursuant to 40 C.F.R. § 403.8(f)(1)(iii) and Permit condition III.B.1.f, the City of Rock Springs is required to control the contribution to the POTW from SIUs through individual permits or equivalent individual control mechanisms issued to each such SIU.
26. The City of Rock Springs' failure to adequately control the contribution to the POTW from the SIU Sweetwater County Memorial Hospital by issuing it an individual permit or equivalent individual control mechanism constitutes a violation of 40 C.F.R. § 403.8(f)(1)(iii) and Permit condition III.B.1.f.

Count IV
(Failure to Implement Procedures to Investigate Instances of Noncompliance)

27. Paragraphs 1 – 26 are incorporated herein.
28. Pursuant to 40 C.F.R. § 403.8(f)(1) and Permit condition III.B.1.d, the City of Rock Springs is required to develop and implement procedures to investigate instances of noncompliance with Pretreatment Standards and requirements, as indicated in the reports and notices required under 40 C.F.R. § 403.12, or indicated by analysis, inspection, and surveillance activities.
29. The City of Rock Springs' failure to implement procedures to investigate instances of noncompliance with Pretreatment Standards and requirements constitutes a violation of 40 C.F.R. § 403.8(f)(1) and Permit condition III.B.1.d.

Count V
(Failure to Enforce According to the POTW's Enforcement Response Plan)

30. Paragraphs 1 – 29 are incorporated herein.
31. Pursuant to 40 C.F.R. § 403.8(f)(5) and Permit conditions II.B.1.e. and i, the City of Rock Springs is required to develop and implement an enforcement response plan that includes

the elements listed in 40 C.F.R. § 403.8(f)(5)(i-iv), including a description of the types of escalating enforcement responses the POTW will take in response to all anticipated types of IU violations of pretreatment requirements and standards and the time periods within which responses will take place.

32. The City of Rock Springs has an enforcement response plan titled, "City of Rock Springs Enforcement Guide Plan and Procedures" (ERP), dated January 31, 1994.

33. The City of Rock Springs' ERP states on page 4, "The City of Rock Springs intends to use two response levels to any violation, an informal response or a formal response. At no time shall no response be adequate."

34. The City of Rock Springs's ERP provides that initial enforcement responses will occur within fifteen (15) days of violation detection and follow-up actions for continuing or recurring violations shall be taken within 60 days of the initial enforcement response.

35. The City of Rock Springs failed to initiate any enforcement response to the IU and SIU violations described above in accordance with the ERP.

36. The City of Rock Springs's failure to properly implement the ERP constitutes a violation of 40 C.F.R. § 403.8(f)(5) and Permit conditions III.B.1.e. and i.

CONSENT AGREEMENT

37. The City of Rock Springs admits the allegations contained in this Consent Agreement.

38. The City of Rock Springs waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.

39. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the EPA, and upon the City of Rock Springs, its elected officers and employees. Any transfer of assets or real or personal property, shall not alter the City of Rock Springs'

responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

40. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of a Class I civil penalty of up to \$16,000 per violation of section 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$37,500 for violations occurring after January 12, 2009. These amounts have been adjusted for inflation by 40 C.F.R. part 19. For purposes of determining the amount of any civil penalty to be assessed, section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), requires the EPA to take into account the following factors: 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, economic benefit or savings gained from the violation, and such other factors that justice may require.

41. Based on the factors listed in paragraph 40, the EPA proposes a civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500) to settle this action.

42. The City of Rock Springs consents to the issuance of a final order in this matter and agrees to pay the civil penalty cited in paragraph 41 above as follows:

- a. Payment is due within thirty (30) calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Consent Agreement. 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 this amount, 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
PO 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.

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

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

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in (c) above, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be

assessed on any unpaid principal amount if the penalty payment is not received within ninety (90) days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

PUBLIC NOTICE

43. As required by the Act, prior to the final assessment of a civil penalty, the EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2 (c)(3)(B).

GENERAL PROVISIONS

44. Payment of the penalty in this matter does not relieve the City of Rock Springs of its obligation to comply with the requirements of the Act. Payment of the penalty in this matter shall constitute consent by the City of Rock Springs to the assessment of the proposed penalty and a waiver of the City of Rock Springs' right to a hearing on this matter.

45. Failure by the City of Rock Springs to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

46. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of the City of Rock Springs' failure to perform pursuant to the terms of this Consent Agreement.

47. The undersigned representative of the City of Rock Springs certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the City of Rock Springs to the terms and conditions of this Consent Agreement.


48. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

49. Each party shall bear its own costs and attorney fees in connection with this matter.


50. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this Consent Agreement.

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

Date: 03/21/13


James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 03/20/13


Gwenette C. Campbell, Unit Chief
NPDES Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON A
COMBINED COMPLAINT AND CONSENT AGREEMENT BETWEEN
CITY OF ROCK SPRINGS, WYOMING
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
TO RESOLVE ALLEGED VIOLATIONS OF
THE CLEAN WATER ACT**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on the Combined Complaint and Consent Agreement (CCCA) between the City of Rock Springs, Wyoming (Respondent), and the United States Environmental Protection Agency (EPA), bearing Docket # **CWA-08-2013-0009**. EPA alleged that the Respondent violated the requirements of the Clean Water Act (CWA) by failing to implement its approved pretreatment program. The CCCA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by Title 40 of the Code of Federal Regulations (40 C.F.R.), Section 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3). In the CCCA, Respondent agrees to pay a penalty of \$12,500. The CCCA is issued under the National Pollutant Discharge Elimination System (NPDES) provisions of the CWA. These regulations govern the discharge of wastewater to "Waters of the United States". The addresses of EPA and respondent are listed here.

Respondent: City of Rock Springs, 212 D Street, Rock Springs, Wyoming 82901

EPA: Assistant Regional Administrator, Office of Enforcement, Compliance & Environmental Justice, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that any penalty assessed is appropriate.

PUBLIC COMMENTS

Written comments on the CCCA are encouraged and will be accepted at the address listed below for a period of forty (40) days after the publication of this notice. Written comments submitted by the public as well as information submitted by Respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The complaint is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf> by searching for the company name or Docket #.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129.
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until 40 days after this public notice.