



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JUN - 4 2012

Ref: 8ENF-L

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

The Honorable Randal A. Woods, Mayor
The Town of Hot Springs
P.O. Box 669
Hot Springs, MT 59845-0669

Re: Findings of Violation and Order for Compliance
Town of Hot Springs Wastewater Treatment
Facility
Docket No. **CWA-08-2012-0016**

Dear Mayor Woods:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance (Order) issued to the Town of Hot Springs for alleged violations of the Clean Water Act (Act) and National Pollutant Discharge Elimination System (NPDES) permit at the Town of Hot Springs' wastewater treatment facility (facility). Specifically, this Order is issued in response to the unauthorized discharge of untreated wastewater from the facility into Hot Springs Creek and surrounding wetland. The authority for EPA to issue this Order is provided under section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3).

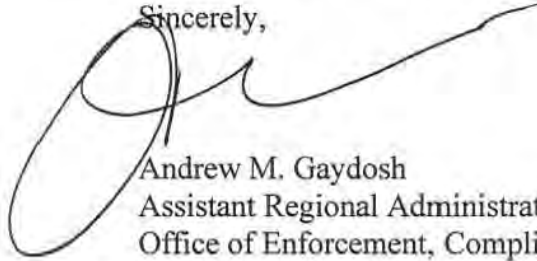
The Order describes the actions necessary for the Town of Hot Springs to achieve compliance with the Act. Specifically, the Order requires the Town to submit information verifying that the sanitary sewer overflow (SSO) of December 28, 2011 has been permanently repaired; to review and begin enforcing its Sewer System Ordinance and other local controls relating to the system; and to evaluate the system and submit a plan and schedule checking for and correcting deficiencies and/or modifications that may be contributing to the facility's SSOs. The Order also requires the Town of Hot Springs to develop a draft management and operation plan for the facility to prevent future SSOs.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued thereunder. 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 judicial actions 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.

Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet. 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 complaint.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the Town of Hot Springs' compliance with the Act, the most knowledgeable people on my staff regarding these matters for legal and technical issues, respectively, are Amy Swanson, Enforcement Attorney, at (303) 312-6906, and David Rise, Montana Office NPDES Program, at (406) 457-5012.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

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

cc: Ruben Loberg, Town of Hot Springs, Public Works
Marcel A. Quinn, Hammer, Hewitt, Jacobs & Quinn
Mike Durglo, CS&KT Natural Resource Department, Environmental Protection Manager
Rich Janssen, CS&KT Environmental Director
Clint Folden, CS&KT Natural Resource Department, Environmental Protection
Tina Artemis, Regional Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 JUN -4 AM 11:14

In the Matter of:)
)
The Town of Hot Springs, Montana)
Hot Springs, Montana)
NPDES Permit No. MT0020591)
)
Respondent)

Docket No. **CWA-08-2012-0016** FILED
EPA REGION VIII
JUN 04 2012

**FINDINGS OF VIOLATION AND
ORDER FOR COMPLIANCE**

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

STATUTORY AUTHORITY

The following Findings of Violation and 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 Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS OF FACT AND LAW

1. The Town of Hot 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.
2. Respondent 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.
3. 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.

4. Effective June 1, 2006, EPA issued NPDES Permit no. MT0020591 to the Town of Hot Springs authorizing, in part, the Town of Hot Springs to discharge from its wastewater lagoon to waters of the United States in accordance with the conditions set forth in the Permit. Effective October 1, 2011, EPA reissued the Town of Hot Springs NPDES Permit no. MT0020591 (Permit).
5. Respondent owns and/or operates a wastewater treatment facility (facility) that includes a sanitary sewer collection system, a lift station, and a three-cell wastewater treatment lagoon, serving the incorporated Town of Hot Springs.
6. The facility is located within the exterior boundaries of the Flathead Indian Reservation in Montana.
7. The Confederated Salish and Kootenai Tribes (Tribe) do not own, manage 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 into Hot Springs Creek, which flows east into the Little Bitterroot River before entering 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, navigable waters within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
10. 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.
11. Wastewater is a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

12. Respondent is subject to the requirements of the Act, the Permit, and EPA's regulations implementing the Act.
13. Part 2.8.1 of the Permit requires Respondent to report any noncompliance which may endanger health or the environment to EPA and the Tribe within 24 hours of becoming aware of the circumstance.
14. Part 2.8.2 of the Permit requires, in part, the Respondent to report noncompliance including any unanticipated bypass or upset which exceeds any Permit effluent limitation, or violation of a maximum daily discharge limitation for any of the pollutants listed in the permit, by telephone to EPA and the Tribe the first workday following the day of becoming aware of the circumstance.
15. Part 2.8.3 of the Permit requires Respondent within 5 days of becoming aware of any noncompliance to provide EPA and the Tribe 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.
16. Part 3.4 of the Permit requires Respondent to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment.
17. Part 3.5 of the Permit requires Respondent 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 permittee to achieve compliance with the conditions of the permit. At a minimum, Respondent is required to operate one complete set of each main

line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

FINDINGS OF VIOLATION

18. On December 27, 2011, the Tribe's Environmental Protection Division received an email from a resident of the Town of Hot Springs reporting a sewer smell behind the resident's home.
19. On December 28, 2011 a Federally-credentialed Tribal inspector investigated the complaint.
20. During the investigation, the inspector found and photographed a Sanitary Sewer Overflow (SSO) from the facility's sanitary sewer collection system adjacent to Hot Springs Creek, which had discharged untreated wastewater into Hot Springs Creek and the surrounding wetland.
21. The inspector contacted Mayor Randal Woods of the Town of Hot Springs regarding the SSO on December 28, 2011.
22. On December 28, 2011, EPA received an email from the Tribe reporting the complaint and investigation findings.
23. On January 5, 2012, EPA received as an email attachment a letter from the Town of Hot Springs reporting and describing the SSO.
24. The facility discharged wastewater from an unauthorized outfall on or before December 27, 2011, in violation of Part 1.2 of the Permit.
25. The Respondent failed to report the unauthorized discharge to the EPA and the Tribe within 24 hours of becoming aware of the circumstances, in violation of Part 2.8.1 of the Permit.

26. The Respondent failed to report the unauthorized discharge to the EPA and the Tribe by the first workday following the day of becoming aware of the circumstance, in violation of Part 2.8.2 of the Permit.
27. The January 5, 2012 email describing the noncompliance was not received within 5 days of becoming aware of the SSO, in violation of Part 2.8.3 of the Permit.
28. The January 5, 2012 email did not contain all of the required written notification items listed in Part 2.8.3 of the Permit, including the period of noncompliance, exact dates and times, and the steps taken or planned to prevent recurrence of the noncompliance.
29. The Respondent failed to properly operate and maintain the facility's sanitary sewer collection system collection system, in violation of Part 3.5 of the Permit.

ORDER

30. Within 10 calendar days of receipt of this Order, Respondent shall submit a written notice of intent to EPA to comply with the requirements of this Order.
31. Respondent shall comply with all requirements of the Permit including, but not limited to, Parts 1.2 (discharge only from designated outfall in accordance with Permit provisions); 1.3.3.1 (conduct weekly self-inspections); 1.3.3.2 (properly document weekly self-inspection reports); 2.8.1 (report noncompliance which may endanger health or the environment within 24 hours to EPA and Tribe); 2.8.2 (report any unanticipated bypass or upset by telephone the first workday following the incident to EPA and the Tribe); 2.8.3 (submit a written description of the unauthorized discharge within 5 days to EPA and the Tribe); and 3.5 (properly operate and maintain all facilities and systems of control).

32. No later than 30 thirty calendar days after receiving this Order, Respondent shall submit to EPA and the Tribe written verification that the SSO has been permanently repaired and an explanation of how the sewer line was repaired, including invoices, photographs and other information documenting that the work has been successfully completed.
33. No later than 30 calendar days after receiving this Order, Respondent shall review and begin enforcing its Sewer System ordinance (Chapter 13.08.010-190) and other local controls related to the facility's sanitary sewer collection system including, but not limited to, the individual service line requirement, to prevent unauthorized service line hook-ups and thus potentially reduce the number of sewage back-ups.
34. No later than 60 calendar days after receiving this Order, Respondent shall evaluate the facility's sanitary sewer collection system and check for deficiencies and/or modifications that may cause SSOs. Within 90 days after receiving this Order, Respondent shall submit to EPA for review and approval a plan and schedule for correcting any physical or design deficiencies. All corrective actions must be completed within 12 months of this Order.
35. No later than 60 calendar days after receiving this Order, Respondent shall develop and submit to EPA for review and approval a draft management and operation plan for the sanitary sewer collection system that includes, at a minimum, the following elements to prevent SSOs in the future:

(1) Overflow Emergency Response Plan. An overflow emergency response plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit. At a minimum the emergency response plan must include mechanisms to:

- (a) Ensure that Respondent is aware (to the greatest extent possible) of all overflows from portions of the sanitary sewer collection system and any unanticipated bypass or upset that exceeds any effluent limitation in the permit;

- (b) Ensure appropriate responses including assurance that reports of an overflow or of an unanticipated bypass or upset that exceeds any effluent limitation in the permit are immediately dispatched to appropriate personnel for investigation and response;
- (c) Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained.

(2) Measures and Activities. Respondent's management and operation plan must address the following elements, including identification of the person or position in its organization responsible for each element:

- (a) Provide adequate maintenance facilities and equipment;
- (b) Maintain a map of the collection system;
- (c) Conduct routine preventive operation and maintenance activities;
- (d) Assess the current dry and wet weather capacities of the sanitary sewer collection system and treatment facilities;
- (e) Identify and prioritize structural deficiencies, and identify and implement short-term and long-term rehabilitation actions to address each deficiency;
- (f) Provide appropriate training on a regular basis; and
- (g) Maintain equipment and replacement parts inventories including identification of critical replacement parts.

(3) Design and Performance Provisions. Respondent must establish:

- (a) Requirements and standards for the installation of new sewers, pumps and other appurtenances; and rehabilitation and repair projects; and
- (b) Procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.

(4) Monitoring, Measurement, and Program Modifications. Respondent must:

- (a) Monitor the implementation and effectiveness of each element of its management and operation plan; and
- (b) Update program elements as appropriate based on monitoring or performance evaluations

- 36. Respondent shall submit a final management and operation plan to EPA and the Tribe within 30 calendar days of receiving and addressing EPA's comments.
- 37. All notices and reports to EPA required by this Order shall be given to:

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

38. All notices and reports to the Tribe required by this Order shall be given to:

Clint Folden, Environmental Protection Division
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

39. All reports and information required by this 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.

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

41. 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 \$37,500 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.

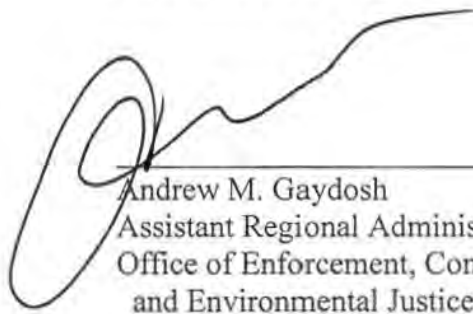
42. Nothing in this Order shall be construed to preclude further action under section 309 of the Act for those violations cited herein or relieve Respondent from responsibilities,

liabilities, or penalties established pursuant to any applicable Federal, State, Local and/or Tribal law or regulation.

43. This Order shall be effective upon receipt by Respondent.

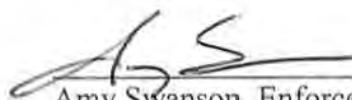
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8.**

Date: 6/4/12



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

Date: 6.4.2012



Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, CO 80202-1149
Telephone: 303/312-6906

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:

Randal A. Woods, Mayor
Town of Hot Springs
P.O. Box 669
Hot Springs, MT 59845

Date: 6/4/2012

By: Judith M. McTernan

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, 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.

EPA's Small Business Websites

Small Business Environmental Homepage - www.smallbiz-enviroweb.org

Small Business Gateway - www.epa.gov/smallbusiness

EPA's Small Business Ombudsman - www.epa.gov/sbo or 1-800-368-5888

EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/
business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to 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

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/

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 or 1-734-995-4911

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Metal Finishing

www.nmfrc.org

Paints and Coatings

www.paintcenter.org

Printed Wiring Board Manufacturing

www.pwbrc.org

Printing

www.pneac.org

Ports

www.portcompliance.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

Hotlines, Helplines and Clearinghouses

www.epa.gov/epahome/hotline.htm

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

Antimicrobial Information Hotline

info-antimicrobial@epa.gov or
1-703-308-6411

Clean Air Technology Center (CATC) Info-line

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

Emergency Planning and Community Right-To-Know Act

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

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or
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
www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

www.epa.gov/opptintr/ppic or
1-202-566-0799

Safe Drinking Water Hotline

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

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

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

Wetlands Information Helpline

www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828

State and Tribal Web-Based Resources

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)

www.smallbiz-enviroweb.org

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

EPA's Tribal Compliance Assistance Center

www.epa.gov/tribalcompliance/index.html

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

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/compliance/incentives/smallbusiness/index.html

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

EPA's Audit Policy

www.epa.gov/compliance/incentives/auditing/auditpolicy.html

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), or go to their website at www.sba.gov/ombudsman.

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.