



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 25 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ref: 8ENF-L

Alan Towleron, P.E.
Deputy Director
City of Billings Public Works Department
P.O. Box 30958
Billings, MT 59101

Re: Findings of Violation and Administrative
Order for Compliance
Docket No. **CWA-08-2009-0031**

Dear Mr. Towleron:

Based on our review of all available information, the United States Environmental Protection Agency, Region 8 (EPA) has determined that the City of Billings (the City) is in violation of the Clean Water Act, as amended (CWA or the Act). Section 301 of the Act, 33 U.S.C. § 1311, prohibits, among other things, the discharge of pollutants into waters of the United States except in compliance with the terms of a permit issued under § 402 of the Act, 33 U.S.C. § 1342. An inspection of the City's sanitary sewer collection and conveyance system and publicly owned treatment works on July 28 - 30, 2008, identified numerous violations of the City's National Pollutant Discharge Elimination System (NPDES) permit number MT0022586 (the permit). Specifically, EPA found violations of the permit's conditions and requirements pertaining to sanitary sewer overflows (SSOs), pretreatment, monitoring, reporting, and operation and maintenance.

Enclosed is an EPA Region 8 administrative order (order) that specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. EPA's authority for such action is provided under §§ 308 and 309(a)(3) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(3). The order requires you to inform EPA in writing, within 10 days of receipt, of your intent to fully comply with the order. Also enclosed is a document to assist you in addressing the requirements of the order, as well as a list of technical references for sanitary sewers that you may also find useful. Additionally, we have enclosed a copy of EPA's inspection report from the July 2008 inspection.

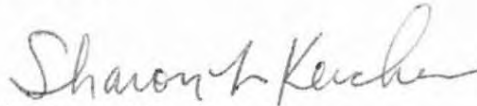


Printed on Recycled Paper

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the Act, 33 U.S.C. § 1319, authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any non-compliance with the CWA or an order issued pursuant to the CWA. Please be advised that the issuance of this order does not preclude civil or criminal actions in the U.S. District Court pursuant to §§ 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to §§ 309(d) or (g) of the Act, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the order.

Please review the order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Senior Attorney, at 303-312-6637 and Amy Clark, Environmental Scientist, at 303-312-7014.

Sincerely,


for Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

cc: Tina Artemis, EPA, Regional Hearing Clerk
Kari Smith, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 SEP 25 AM 10: 52

IN THE MATTER OF:)
)
The City of Billings) **FINDINGS OF VIOLATION AND**
) **ORDER FOR COMPLIANCE**
2251 Belknap Avenue) Proceeding under §§ 308(a) and 309(a)
) of the Clean Water Act, 33 U.S.C.
Billings, Montana 59101,) §§ 1318(a) and 1319(a)
)
Respondent.) Docket No. **CWA-08-2009-0031**
)

FILED
EPA REGION VIII
HEARING CLERK

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for compliance (order) issued pursuant to § 309(a) of the Clean Water Act (the Act), 33 U.S.C. § 1319(a), 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 §§ 301 and 402 of the Act, among others, or in violation of any permit condition or limitation implementing such sections of the Act. This order is also issued pursuant to § 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require reports necessary to determine compliance. These authorities have been delegated to the Regional Administrator of EPA Region 8, and re-delegated to the undersigned official.

FINDINGS OF VIOLATION

1. The City of Billings (respondent) is a “municipality,” as defined by § 502(4) of the Act, 33 U.S.C. § 1362(4), with offices located at 2251 Belknap Avenue, Billings, Montana.
2. A municipality is a “person” within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5).

3. Respondent owns and operates a sewer collection and conveyance system and sewage treatment plant (the facility) located at 725 Highway 87 East, Billings, Montana. The facility is a publicly-owned treatment works (POTW) as that term is defined in 40 C.F.R. § 403.3. The facility discharges treated wastewater to the Yellowstone River.

4. The facility is a “point source” within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).

5. The Yellowstone 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 § 502(7) of the Act, 33 U.S.C. § 1362(7).

6. Wastewater is a “pollutant” within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 402 of the Act, 33 U.S.C. § 1342.

8. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA and, under certain circumstances, the State, to permit discharges to navigable waters, subject to specific terms and conditions.

9. EPA has approved the State of Montana’s NPDES program pursuant to § 402(b) of the Act, 42 U.S.C. § 1342(b).

10. On September 28, 2006, Montana issued permit number MT0022586 (the permit), effective November 1, 2006, which authorizes respondent to discharge from the facility in accordance with Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated, and

the Act.

11. Part I.C. of the permit sets forth monitoring requirements, including the requirement to continuously and instantaneously monitor influent flow.

12. Part I.E.1.f. of the permit requires, among other things, the permittee to control the contribution to the facility by each industrial user to ensure compliance with applicable pretreatment standards and requirements.

13. Part I.E.5.c. of the permit prohibits the introduction of solid and viscous pollutants in amounts which will cause obstruction to the flow in the facility, or other interference with the operation of the facility.

14. Part II.B. of the permit states, in part, that all flow-measuring and flow-recording devices used in obtaining data submitted in self-monitoring reports must indicate values within ten percent (10%) of the actual flow being measured.

15. Part II.D. of the permit states in part that the effluent monitoring results obtained during the previous month(s) shall be summarized for each month and reported on a Discharge Monitoring Report Form (DMR) and submitted to both the Montana Department of Environmental Quality (MDEQ) and EPA.

16. Part II.I. of the permit requires, among other things, that the permittee report any serious incident of noncompliance affecting the environment, including any noncompliance which may seriously endanger health or the environment, as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. Part II.I. of the permit further requires that written submission be provided within five days of the time the permittee becomes aware of the circumstances.

17. Part II.J. of the permit states that instances of noncompliance not required to be reported within 24 hours must be reported at the time that the DMRs are submitted.

18. Part III.E. of the permit requires the permittee to, at all times, properly operate and maintain all facilities of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

19. On July 28 through 30, 2008, inspectors from EPA and MDEQ, accompanied by EPA's contractor, conducted a sanitary sewer overflow (SSO) or capacity, management, operation, and maintenance (CMOM) compliance inspection of the facility. The following violations were noted:

- a. Excessive oil and grease were observed in, and downstream from, the Descro lift station, and the Rimrock Mall grease interceptor was not being properly maintained, indicating that respondent is not controlling the contribution to the facility by each industrial user, in violation of Part I.E. of the permit.
- b. The influent flow meter was not operating properly at the time of the inspection, was reported to MDEQ as malfunctioning in December 2006, and was taken off-line from May 22 to 28, 2008. The malfunctioning flow meter:
 - i. prevented respondent from sampling the influent on a continuous and instantaneous basis, in violation of the monitoring requirements set forth in Part I.C. of the permit;
 - ii. was used in obtaining data submitted in the DMRs but did not indicate values within ten percent (10%) of the actual flow, in violation of Part II.B. of the permit;

- iii. was not reported as an instance of non-compliance in the DMR, in violation of Part II.J. of the permit; and
 - iv. violated the requirement set forth in Part III.E. to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the permit.
- c. According to information provided by respondent during the inspection, respondent experienced over 150 SSOs between 2004 and June of 2008. SSOs may seriously endanger health or the environment. Information compiled by respondent shows that a number of the SSOs were related to grease and roots. The SSOs:
 - i. were not reported within twenty-four (24) hours of the time respondent first became aware of the circumstances, and were not reported in written submissions within five (5) days, in violation of Part II.I of the permit;
 - ii. violated the requirement set forth in Part III.E. to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the permit; and
 - iii. violated the requirement set forth in Part I.E.5.c. of the permit to prohibit the introduction of solid and viscous pollutants in amounts

which will cause obstruction or interference with the operation of the facility.

ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a), as properly delegate to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Within ten (10) calendar days of receipt of this order, respondent shall submit to EPA written notice of intent to comply with the requirements of this order.
2. Within thirty (30) days of receipt of this order, respondent shall either replace or repair the faulty inflow meter and send a report to EPA of the actions taken. If the meter was replaced or repaired between August 2008 and receipt of this order, respondent shall instead submit a report to EPA summarizing the corrective actions taken.
3. Within ninety (90) days of receipt of this order, respondent shall submit to EPA for review and approval a work plan for conducting a CMOM study to identify all measures needed to ensure that the facility complies with the requirements of the Act and regulations promulgated thereunder, Montana water pollution control laws and regulations promulgated thereunder, and the permit, with the goal of eliminating all preventable SSOs. The CMOM study must include, but not be limited to, the implementation of root and grease control programs. The work plan must provide for completion of the CMOM study within eighteen (18) months of receipt of this order. Respondent shall commence implementation of the work plan within forty-five (45) days

following approval by EPA.

4. Within ninety (90) days following completion of the CMOM study, respondent shall submit a final report (CMOM report) to EPA for review and approval, setting forth its findings, conclusions and recommended remedial measures to eliminate preventable SSOs, along with a proposed schedule for implementation of the remedial measures. Respondent shall implement the remedial measures set forth in the CMOM report within forty-five (45) days following approval by EPA of the CMOM report.

5. Commencing thirty (30) days after receipt of this order, respondent shall provide oral and written reports of all SSOs (including building/private property backups) to MDEQ in accordance with the requirements set forth in Part II.I. of the permit. In addition, commencing thirty (30) days after receipt of this order and continuing until this order is terminated, respondent shall provide oral and written reports of all SSOs to EPA at the telephone number and address set forth in paragraph 10 of this order.

6. Within sixty (60) days of receipt of this order, respondent shall submit to EPA for review and approval an SSO emergency response plan (SSO ERP) setting forth the procedures to be used to respond to SSOs and to minimize the environmental impact and potential human health risk of SSOs. Respondent shall implement the SSO ERP within thirty (30) days of approval of the SSO ERP by EPA.

7. EPA will review the submissions described in paragraphs 3, 4, and 6 above, and may: (a) approve the submission; (b) approve the submission with modifications; or (c) disapprove the submission and direct respondent to resubmit the document after incorporating EPA's comments.

8. Upon receipt of a notice of disapproval or a request for modification as described in

paragraph 7 above, respondent shall, within fifteen (15) calendar days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the submission. Respondent shall have the opportunity to object in writing to the notification of disapproval or request for modification given pursuant to paragraph 7 within fifteen (15) calendar days of receipt of such notification. EPA and respondent shall have an additional thirty (30) calendar day from receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) calendar day period, EPA shall provide a written statement of its decision to respondent, which decision shall be final and binding upon respondent.

9. Upon EPA approval, or approval with modification of the submissions required under paragraphs 3, 4, and 6, above, the submissions and their implementation schedules will be incorporated into this order.

10. A copy of the submissions required by paragraphs 2 - 4 and 6 of this order and of all related correspondence, plans, schedules, and reports, shall be sent to the following addresses:

Amy Clark (8ENF-W-NP)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
clark.amy@epa.gov
303-312-7014 (Phone)
303-312-7202 (Fax)

and

Kari Smith
Montana Department of Environmental Quality
Water Protection Bureau
P.O. Box 200901

Helena, MT 59620-0901
406-444-6727 (Phone)

11. All correspondence, plans, schedules, and reports submitted pursuant to this order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of respondent (as specified by 40 C.F.R. § 122.22(b)) and shall include the following statement:

“I 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 who manage the system, or those persons directly responsible for gathering the information, I certify that 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 and imprisonment for knowing violations.”

12. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of EPA and MDEQ, or any of the agencies’ contractors, upon proper presentation of credentials, to the facility and records relevant to this order for the following purposes:

- a. To inspect and monitor progress of the activities required by this order;
- b. To inspect and monitor compliance with this order; and
- c. To verify and evaluate data and other information submitted to EPA.

13. This order shall in no way limit or otherwise affect EPA’s authority, or the authority of any other governmental agency, to enter the facility, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

14. Compliance with the terms and conditions of this order shall not be construed to relieve

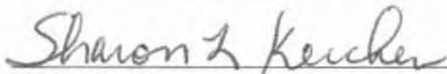
respondent of its obligation to comply with any applicable Federal, state, or local law or regulation.


15. Please be advised that § 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation which occurred from March 15, 2004, through January 12, 2009, and \$37,500 per day for each violation thereafter of § 301 of the Act, 33 U.S.C. § 1311. Section 309(d) of the Act, 33 U.S.C. § 1319(d) further authorizes such penalties for each violation of a permit condition in a permit issued by a state under § 402 of the Act, 33 U.S.C. § 1342, and for each violation of an order issued by the Administrator of EPA under § 309(a) of the Act, 33 U.S.C. § 1319(a), including this order. Additionally, § 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, § 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act. Issuance of this order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this order.

16. Issuance of this order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this order.

17. This order shall be effective upon receipt by respondent.

DATED this 25th day of September, 2009.



 Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

IN THE MATTER OF: CITY OF BILLINGS
BILLINGS, MONTANA

DOCKET NUMBER: CWA-08-2009-0031

CERTIFICATE OF SERVICE

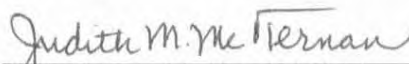
The undersigned hereby certifies that the original and one copy of the FINDINGS OF VIOLATION AND ADMINISTRATIVE ORDER FOR COMPLIANCE dated September 25, 2009 was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Alan Towleron, P.E.
Deputy Director
City Of Billings Public Works Department
P. O. Box 30958
Billings, Montana 59101

And that a true copy was also mailed to:

Kari Smith, Supervisor
Compliance and Support Unit
Water Protections Bureau
Department of Environmental Quality
P. O. Box 200901
Helena, Montana 59620-0901

9/25/09
Date


Judith M. Mc Ternan