



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

JUN - 3 2015

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Ben Johnson, Mayor
Town of Brockton
P.O. Box 216
Brockton, Montana 59213

Re: Findings of Violation and Order for Compliance, In the Matter of the Town of Brockton,
Docket No. **CWA-08-2015-0016**

Dear Mayor Johnson:

The U.S. Environmental Protection Agency (EPA) is issuing the Town of Brockton (Town) the enclosed Findings of Violation and Order for Compliance (Order) for alleged violations of the Clean Water Act (Act) and the Town's National Pollutant Discharge Elimination System (NPDES) Permit No. MT0030589 at the Town's Wastewater Treatment Facility. The EPA is authorized to issue this Order pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3). This Order follows the EPA's offer of December 11, 2014, to enter into an administrative order on consent to resolve the issues that the Town did not accept.

The Order describes the actions necessary for the Town to achieve compliance with its Permit and the Act. Specifically, the Order requires the Town to perform all monitoring required by Sections 1.3.2 and 2.4 of the Permit and submit monthly discharge monitoring reports to the EPA in accordance with sections 1.3.2. If no discharge occurs during the entire monitoring period, the Order directs the Town to state on the DMR that no discharge or overflow occurred. The Order further requires the Town to properly operate and maintain the Facility and submit to the EPA within 30 days of receipt a plan and schedule for hiring a wastewater operator or otherwise arranging with the Tribe, a neighboring local government or a private contractor to properly operate, maintain and repair the Facility.

The Act requires the 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 U.S. District Court action 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 Town's responsibility to comply with the Act or to respond to this Order.

If you have any questions regarding this letter, the enclosed Order or any other matters pertinent to the Town's compliance with the Permit or the Act, the most knowledgeable people on my staff regarding these matters are Monia Ben-Khaled, Technical Enforcement Program, at (303) 312-6209, and Amy Swanson, Legal Enforcement Attorney, at (303) 312-6906.

Sincerely,



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

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

cc: The Honorable A.T. Stafne, Chairman
Ms. Deb Madison, Environmental Director
Assiniboine and Sioux Tribes

Mr. Quentin Allen, Engineer
Indian Health Service



4. The Town owns and/or operates a wastewater treatment facility (Facility) located approximately 220 feet from the Missouri River in the northeast quarter of section 29, township 28 north, range 53 east, latitude 48 09' 00" N and longitude 104 54' 13" W, Roosevelt County, Montana, that includes a gravity-fed sewer collection system, a lift station and a three-cell lagoon.
5. The Town is incorporated pursuant to the laws of the State of Montana within the exterior boundaries of the Fort Peck Reservation in Montana.
6. The Assiniboine and Sioux Tribes (Tribes) do not own, manage, or control the Facility.
7. The Facility is a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
8. The Facility discharges effluent from a pipe extending approximately 30 feet from cell 3 that then flows overland to the Missouri River, an interstate water that has been determined to be a jurisdictional water by of the U.S. by the U.S. Army Corps of Engineers. The Missouri River and its tributaries are "waters of the United States" within the meaning of 40 C.F.R. § 122.2 and therefore, are navigable waters within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
9. Wastewater is a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), in relevant parts, prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by a permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342.
11. Pursuant to section 402 of the Act, 33 U.S.C. § 1342, the EPA issued NPDES Permit No. MT0030589 (Permit) effective October 1, 2011, authorizing the Town to discharge treated

wastewater from the Facility overland to the Missouri River in accordance with the conditions set forth in the Permit. The Permit expires September 30, 2015.

12. The Town is subject to the requirements of the Act, the Permit and the EPA's regulations implementing the Act.

Unauthorized Discharge

13. Part 1.2 of the Permit provides that the authorization to discharge is limited to discharges from the outfall (Outfall #001), which is a discharge pipe extending from a dike in the southeast corner of Cell 3; effluent flows overland to the Missouri River.

14. Part 2.8.1 of the Permit requires the Town to report any noncompliance which may endanger health or the environment to the EPA and the Tribes within 24 hours of becoming aware of the circumstance.

15. Part 2.8.2 of the Permit requires the Town to report, in part, any unauthorized discharge by telephone to the EPA and the Tribes the first workday following the day of becoming aware of the circumstance.

16. Part 2.8.3 of the Permit requires the Town within five days of becoming aware of the circumstances to provide EPA and the Tribes 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.

17. Part 3.5 of the Permit requires the Town 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 Town to achieve compliance with the conditions of the Permit. This provision

requires the operation of back-up or auxiliary facilities or similar systems which are installed by the Town only when the operation is necessary to achieve compliance with the conditions of the permit. However, the Town is required at a minimum to operate one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

18. On May 8, 2014, the Indian Health Service during a site visit responded to a Sanitary Sewer Overflow (SSO) at the Facility caused by an inoperable lift station. Because the power had been shut-off, the Facility's lift station was not operating and sewage backed up in the main line along the north side of the lagoon cells almost to the Town. Raw sewage flowed out of manhole #4 into a ditch located between the lagoon cells and railroad tracks and travelled east toward the Missouri River. Tribal Enterprise, a Tribally-owned business, used a vacuum truck to pump out the wet well and the manholes to resolve the SSO. The Town did not notify the EPA of the SSO as required by Parts 2.8 and 2.9 of the Permit.

Failure to Submit Discharge Monitoring Reports

19. Part 1.3.2 of the Permit requires the Town to monitor and record monthly for specified constituents at Outfall 001. If no discharge occurs during the entire monitoring period, the Town is required by the Permit to indicate on the Discharge Monitoring Report (DMR) form that no discharge or overflow occurred. (Permit 1.3.2.1).

20. Part 2.4 of the Permit provides that effluent monitoring results obtained during the previous month shall be summarized and reported on one DMR form, postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported.

21. The Town failed to submit timely DMRs to the EPA for the month of September 2010 and each consecutive month from May 2011 through the filing date of this Order in violation of Parts 1.3.2 and 2.4 of the Permit.

22. The Town's failure to submit timely DMRs to the EPA for the timeframe specified in paragraph 16 above constitutes violations of a Permit issued under section 402 of the Act, 42 U.S.C. § 1342.

ORDER

23. Within 10 days of receipt of the Order, the Town shall submit a written notice to the EPA of intent to comply with the requirements of this Order.

24. The Town shall comply with all the requirements of the Permit.

25. Effective immediately, the Town shall properly operate and maintain the Facility in accordance with section 3.5 of the Permit including, but not limited to, timely paying all utility bills associated with the operation of the lift station and other Facility appurtenances.

26. Effective immediately, the Town shall monitor any discharge in accordance with sections 1.3.2 and 2.4 of the Permit.

27. Effective immediately, the Town shall retain and make available to the EPA upon request all paper, and electronic if available, monthly DMRs dating back three (3) years. Other records shall be kept for the duration specified in the Permit.

28. Postmarked no later than the 28th day of the month following the effective date of this Order and each month thereafter, the Town shall mail to the persons identified below in paragraph 30 full and complete signed copies of the DMRs as required by section 1.3.2 of the Permit. If no discharge occurs during the entire monitoring period, it shall be stated on the DMR that no discharge or overflow occurred.

29. Within 30 days of receipt of this Order, the Town shall submit to the EPA for review and approval a plan and schedule for hiring a wastewater operator or otherwise arranging with the Tribes, a neighboring local government or a private contractor to properly operate, maintain and repair the Facility.

30. All DMRs required by the Permit and this Order shall be mailed to:

Monia Ben Khaled (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

U.S. EPA Region 8 (8ENF-PJ)
Attention: DMR Coordinator
1595 Wynkoop Street
Denver, CO 80202-1129

31. All notices and other submittals required by this Order shall be given to:

Monia Ben Khaled (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Ben-khaled.moniam@epag.gov

Deb Madison, Environmental Director
Assiniboine and Sioux Tribes
P.O. Box 1027
Poplar, MT 59255
2horses@nemontel.net

32. 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.

GENERAL PROVISIONS

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

34. 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.

35. 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 Town from responsibilities, liabilities or penalties established pursuant to any applicable federal or tribal law or regulation.

36. This Order shall be effective upon receipt by the Town.

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

Date: June 3, 2015



Suzanne J. Bogan
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, 80202, and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

The Honorable Ben Johnson, Mayor
Town of Brockton
PO Box 208
Brockton, MT 59213

Date: 6/3/15

By: Jean Dethy



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.

Small Business Programs

www.epa.gov/smallbusiness
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman

www.epa.gov/sbo or 1-800-368-5888
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

EPA's Compliance Assistance Homepage

www2.epa.gov/compliance
This page is a gateway 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

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

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, Helplines and Clearinghouses

www2.epa.gov/home/epa-hotlines

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

Clean Air Technology Center (CATC) Info-line

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

Superfund, TRI, EPCRA, RMP and Oil Information Center

www.epa.gov/superfund/contacts/infocenter/index.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/drink/hotline/index.cfm or 1-800-426-4791

Stratospheric Ozone Protection Hotline

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

Toxic Substances Control Act (TSCA) Hotline

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

Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

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

<http://www.epa.gov/sbo/rsbl.htm>

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)

www.epa.gov/sbo/507program.htm

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 provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

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

www2.epa.gov/enforcement/small-businesses-and-enforcement

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

EPA's Audit Policy

www2.epa.gov/compliance/epas-audit-policy

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).

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.