



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

JUN 25 2009

Ref: 8ENF-L

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Mr. Tim Burton, City Manager
City of Helena
316 N. Park Avenue
Helena, MT 59623

Re: Findings of Violation and Order for
Compliance
City of Helena POTW
Docket No. CWA-08-2009-0052

0018
ama

Dear Mr. Burton:

Enclosed is a United States Environmental Protection Agency (EPA) Region 8 Order for Compliance (Order) issued to the City of Helena for alleged violations of the City's Industrial Pretreatment Program. The authority for EPA to issue this Order is provided under § 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3).

Section 309 of the Act provides a variety of possible enforcement actions, including civil, criminal, or administrative actions. (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.

EPA is issuing the Order to compel the City to permit all known Significant Industrial Users within the facility's service area, and prepare and maintain an index or survey of Industrial Users discharging into the facility. This action is taken in response to the discharge of elevated levels of hexavalent chromium last fall causing inhibition or disruption of the POTW in violation of the City's Montana Pollutant Discharge Elimination System permit. Although the source of the discharge was never determined, the investigation into the discharge revealed that a known chrome plating facility within the City's service area was not permitted as required by 40 C.F.R. § 403.8(f)(1)(iii). It was further determined during the investigation that the City did not have an index or survey identifying and locating all possible Industrial Users which might be subject to the POTW Pretreatment Program as required by 40 C.F.R. § 403.8(f)(2). The unknown cause of the hexavalent chromium discharge illustrates the need to properly permit and maintain an index

of all known Industrial Users to be better able to locate and respond to the discharges causing pass through or interference.

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 compliance with the Act, please contact Rosemary Rowe, Montana Office, at (406) 457-5020, or ask your attorney to contact Amy Swanson, Enforcement Attorney, at (303) 312-6906.

Sincerely,



Eddie A. Sierra
Acting 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: Lynora Rogstad, Pretreatment Coordinator
Tina Artemis, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 JUN 25 PM 1:44

IN THE MATTER OF:) Docket No. **CWA-08-2009-0018**
)
The City of Helena) **FINDINGS OF VIOLATION**
316 N Park Avenue) **AND ORDER FOR**
Helena, MT 59623) **COMPLIANCE**
)
NPDES Permit No. MT0022641) Proceeding under Section 309(a) of the
) Clean Water Act, 33 U.S.C. § 1319(a)
Respondent.)
_____)

STATUTORY AUTHORITY

The following findings are made and order issued pursuant to the Clean Water Act (Act) § 309(a), 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, *inter alia*, §§ 307 or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. Section 307(b) of the Act, 33 U.S.C. § 1317(b), requires the Administrator to establish pretreatment standards regulating the introduction of pollutants into Publicly-Owned Treatment Works (POTWs). Section 402 of the Act, 33 U.S.C. § 1342(b), authorizes the Administrator to ensure compliance with permits issued pursuant to the National Pollutant Discharge Elimination System (NPDES). 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

1. The City of Helena (Respondent) is a "municipality" as defined by § 502(4) of the Act, 33 U.S.C. § 1362(4), with offices located at 316 N Park Avenue, Helena, Montana.

2. A municipality is a “person” for purposes of federal enforcement under §§ 309 and 502(5) of the Act, 33 U.S.C. §§ 1319 and 1362(5).
3. Respondent owns and operates a wastewater treatment facility (facility) located in Section 17, Township 10 North, Range 3 West. This facility is a publicly-owned treatment works (POTW) as that term is defined at 40 C.F.R. § 403.3.
4. Respondent’s POTW discharges treated wastewater to a ditch leading to Prickly Pear Creek.
5. Prickly Pear Creek is a “water of the United States” within the meaning of 40 C.F.R. § 122.2.
6. The Act § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as in compliance with §§ 301, 302, 306, 307, 318, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
7. Wastewater is a “pollutant” within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).
8. The State of Montana issued NPDES permit no. MT-0022641 (Permit), effective January 1, 1997, which authorizes the Respondent to discharge from the POTW into Prickly Pear Creek in accordance with § 402(a) of the Act, 33 U.S.C. § 1342(a).
9. Part III.I.3 of the Permit states that under no circumstances shall the Respondent allow the introduction of any pollutants to the waste treatment system from any source of nondomestic discharge which can cause interference or pass through.
10. Part I.A.15 of the Permit defines “interference” as any discharge which, alone or in conjunction with other contributing discharges (a) inhibits or disrupts the POTW, its treatment

processes or operations, or its sludge processes, use or disposal; and (b) therefore causes a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude of duration of a violation) or causes the prevention of sewage sludge use or disposal in compliance with the following statutes and regulations: Section 405 of the Clean Water Act; 40 C.F.R. Part 503 – Standards for the Use and Disposal of Sewage Sludge; Resource Conservation and Recovery Act; 40 CFR Part 258 – Criteria for Municipal Solid Waste Landfills; and/or any State regulations regarding the disposal of sewage sludge.

11. Part I.C.2 of the Permit sets ammonia nitrogen limits for the effluent. For the month of October, the limit is 3.03 milligrams per liter (mg/L) as a 30 day average.

12. For the reporting period of October 2008, the Respondent reported a 30 day average of ammonia nitrogen as 10.48 mg/L.

13. During the month of November 2008, the Respondent identified the cause of the ammonia exceedance as high levels of hexavalent chromium in the influent to the wastewater treatment plant. The Respondent observed, on one occasion, a sudden spike in the pH of the influent and a bright shade of yellow-green in the influent. Sludge tests showed chromium present at a tenfold increase over the facility's average. The facility determined that the elevated chromium levels disrupted the plant and inhibited the nitrifying bacteria causing the elevated ammonia levels in the effluent. Inhibition of the facility's processes and the subsequent violation of the Respondent's ammonia nitrogen effluent limit caused a violation of Part III.I.3 of the Permit.

14. Hexavalent chromium is a "pollutant" within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).

15. Respondent conducted an investigation to determine the source of the hexavalent chromium discharge.

FINDINGS OF VIOLATIONS

Count 1

(Failure to Control Discharges from All Significant Industrial Users)

16. Pursuant to 40 C.F.R. § 403.8(f)(1)(iii), the Respondent is responsible for insuring that Industrial Users (defined in 40 C.F.R. § 403.3(j)) that discharge to the POTW comply with all Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under 40 C.F.R. § 403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User.

17. Decorative Industrial Plating is located at 2531 North Dodge Avenue in Helena and within Respondent's service area.

18. Decorative Industrial Plating applies decorative chrome plating to metal parts using Chromic Acid.

19. Decorative Industrial Plating discharges wastewater from its chrome plating process into the POTW.

20. Decorative Industrial Plating is an "Industrial User" within the meaning of 40 C.F.R. § 403.3(j). It is subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. Part 433 Metal Finishing, and hence a "Categorical Industrial User" and a "Significant Industrial User" as defined at 40 C.F.R. § 403.3(v).

21. During the hexavalent chromium discharge investigation, it was determined that the Respondent had not permitted Decorative Industrial Plating, a known Significant Industrial User.

22. Respondent's failure to issue Decorative Industrial Plating, a Significant Industrial User, an individual permit or equivalent individual control mechanism, constitutes a violation of 40 C.F.R § 403.8(f)(1)(iii).

Count 2
(Failure to Prepare and Maintain IU Survey)

23. Pursuant to 40 C.F.R. § 403.8(f)(2), Respondent is required to identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program, and make any compilation, index or inventory of Industrial Users available to the Regional Administrator or Director upon request.

24. 40 C.F.R. § 403.8(i) and (j) define an Industrial User as a source of discharge from any non-domestic source.

25. During the hexavalent chromium discharge investigation, it was determined that the Respondent had not identified and located all Industrial Users which might be subject to the Pretreatment Program.

26. Respondent was unable to provide EPA with any compilation, index or inventory of Industrial Users upon request in February 2009. At that time, the Respondent informed EPA that the only Industrial Users they had were reported in the Annual Report.

27. The 2008 Industrial Pretreatment Program Annual Report on POTW Implementation, submitted March 27, 2009, listed no Categorical Industrial Users or Significant Industrial Users and listed two permitted non-Significant Industrial Users. There was no report of Industrial Users.

28. Respondent's failure to identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program and make available any compilation, index, or inventory upon request by EPA constitutes a violation of 40 C.F.R. § 403.8(f)(2).

ORDER

Based on the foregoing findings, and pursuant to the Act § 309(a)(3), 33 U.S.C. § 1319(a)(3), it is hereby ORDERED that:

1. Upon receipt of this order, Respondent shall immediately comply with all requirements of its Permit.

2. 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.

3. Within thirty (30) calendar days of receipt of this Order, Respondent shall submit to EPA a draft discharge permit for Decorative Industrial Plating and any other known, unpermitted Industrial Users within Respondent's service area which might be subject to the POTW Pretreatment Program. Upon review and approval of the draft permit(s) by EPA, the Respondent shall proceed with issuance of the permit(s) after incorporating any changes identified by EPA into the draft permit(s).

4. Within forty-five (45) days of the receipt of this Order, the Respondent shall submit a plan to inventory and survey all nondomestic dischargers in the POTW's service area. Respondent must include with the Industrial User Inventory all pertinent information in regards to the characterization/categorization of all Industrial Users identified within the inventory. This information shall include for each Industrial User, but not be limited to, the information set forth below. Upon review and approval of the draft plan by EPA, the Respondent shall proceed with

implementing the plan. The Respondent shall incorporate any changes identified by EPA into the plan. Once the plan is approved by EPA, the Respondent shall implement the plan and provide a final report within 90 days of EPA's approval.

- a. Name of Industrial User.
- b. Location of Industrial User.
- c. Type of business, including applicable SIC or NAICS code(s).
- d. Inspection dates for the past 5 years including the associated inspection reports.
- e. Sampling dates and the associated results for the past 5 years, if applicable.
- f. The character and volume (flow rates) of pollutants contributed by the Industrial User to the POTW.
- g. Proof of notice to the Industrial Users of applicable Pretreatment Standards and any applicable requirements under §§ 204(b) and 405 of the Act, and Subtitles C and D of the Resource Conservation and Recovery Act.
- h. Characterization/categorization determination for each Industrial User and whether it is significant, non-significant, BMP requirements and/or subject to Categorical Pretreatment Standards.
- i. If Respondent has determined that an Industrial User is subject to Categorical Pretreatment Standards and is a Non-Significant Categorical Industrial User rather than a Significant Industrial User, provide documentation on this determination including specific information on how the Industrial User meets the requirements outlined in 40 C.F.R. § 403.3(v)(2).
- j. If any Industrial User has been identified as a Significant Industrial User through

the character/characterization evaluation described above in Paragraph 4, provide the date that the Industrial User was placed under an appropriate control mechanism.

5. All written notices, correspondence, plans, schedules, and reports required by this Order shall be sent to the following address:

Rosemary Rowe
U.S. Environmental Protection Agency, Region 8
Montana Office
10 West 15th Street, Suite 3200
Helena, MT 59626

6. All reports and information required by this Order shall include the following certification statement, to be signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official:

"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 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 and imprisonment for knowing violations."

7. 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 the Act § 309, 33 U.S.C.

§ 1319.

8. This Order does not constitute a waiver or modification of the terms and conditions of the Permit, which remains in full force and effect.

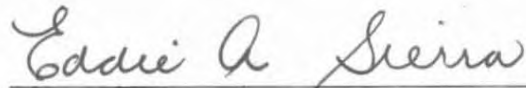
9. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Please be advised that the Act § 309(d), 33 U.S.C. § 1319(d), authorizes the assessment of civil penalties of up to \$37,500 per day for each violation of the Act, while § 309(c) of the Act, 33 U.S.C.

§ 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

10. Nothing in this Order shall be preclude further action under § 309 of the Act, 33 U.S.C. § 1319, for those violations cited herein or to relieve Responding from responsibilities, liabilities, or penalties established pursuant to any applicable federal, state, or local law or regulation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 6/25/2009



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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the preceding Findings of Violation and 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 hand-carried to the following by the undersigned EPA representative:

Mr. Tim Burton, City Manager
City of Helena
316 N. Park Avenue
Helena, MT 59623

Date: _____

By: _____
John Wardell, Director
Montana Operations Office