

2011 JAN 12 AM 9:25

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
PHONE 800-277-8917
<http://www.epa.gov/region08>
REF: 8ENF-W-NP

FILED
EPA REGION VIII
HEARING CLERK

PERMIT NO.: SD-0020192
AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

CITY OF EAGLE BUTTE

SUMMARY OF CORRECTIVE ACTIONS

01/01/11 ADDENDUM

RE: Findings of Violation and Order for
Compliance under Section 309 of
Docket No. **CWA-08-2010-0040**
AND
Proposed Assessment of Class I
Civil Penalty under Section 309 of
the Clean Water Act
Docket No. **CWA-08-2010-0041**

TO WHOM IT MAY CONCERN:

ANDREW M. GAYDOSH, ASSISTANT REGIONAL DIRECTOR
OFFICE OF ENFORCEMENT, COMPLIANCE AND ENVIRONMENTAL JUSTICE

TINA ARTEMIS, REGIONAL HEARING CLERK (8RC)

NATASHA DAVIS (8ENF-W-NP)

MARGARET J. (PEGGY) LIVINGSTON, ENFORCEMENT ATTORNEY

ORIGINAL RESPONSE:

1. (22) In the Month of March 2010, the City of Eagle Butte failed to request permission from the EPA prior to releasing a discharge from the Facility, in violation of Part 1.3.2. of the Permit.
2. (23) In the Month of March 2010, the City of Eagle Butte failed to request permission to discharge from the EPA, in violation of Part 1.3.2. of the Permit.
3. (24) In the Month of March 2010, the City of Eagle Butte failed to report the unauthorized discharge to EPA in violation of Part 2.9. of the Permit.
4. (25) In the Month of March 2010, the City of Eagle Butte failed to notify the Tribe of a discharge, in violation of Part 2.11. of the Permit.

*RESPONSE: The City of Eagle Butte did **NOT** release a discharge from the facility in the month of March 2010!! Therefore items 6-9 (22-25) cannot be responded to as they are NOT valid or factual allegations.*

ADDENDUM:

1. Date of Violation (no permission for discharge):

As a result of a recent conversation with Natasha Davis wherefrom it was ascertained that the alleged illegal discharge did supposedly occur March 2010. While the original response addresses the period March 2010, there seems to have been some confusion as a result of verbal communications regarding this date - March 2009 vs. March 2010. It has been verbally clarified that the period is March 2010 for which our original response does refer to.

2. Incident Discovery:

The discovery of this incident was as a result of a communication from the CRST EPD. The CRST EPD was therefore instructed by Natasha Davis to take dated pictures of the incident and to obtain samples/lab results from the discharge waters. The CRST EPD did submit the requested photos and lab results. It was noted that the lab results did reflect parameters that did comply with the discharge permit parameters. It is also important to note that the CRST did NOT report any issue of this nature to the City of Eagle Butte.

Natasha Davis does state that she did then contact Jon Ganje regarding this incident. He did respond that he was not responsible for the discharge as he nor other city personnel did not open the valves. Natasha Davis did then remind Mr. Ganje of the City's responsibility to notify the EPA of such a discharge incident and indicate what the City would be doing to prevent this incident from occurring again.

Mr. Ganje did investigate the matter, discover that a tampering incident had occurred and the valve tampered with and thereby opened for release purposes. Mr. Ganje did immediately correct the matter by turning the valve to the off position. He determined that since testing had been performed that the testing criteria had been met and the levels within permit parameters as per information provided by Ms. Davis. Mr. Ganje did assume that since the CRST EPD had reported the incident to the US EPA who then did contact the City that a discharge was occurring and Mr. Ganje had conferred with Ms. Davis, that both entities had been informed and reporting requirements met. Ms. Davis states that there was an expectation that the City submit a written report regarding the incident to include plans for corrective action / how the city was going to prevent this from occurring again. Mr. Ganje states that this was not his understanding. Ms. Davis refers the City to the permit requirements and Mr. Ganje states that he did communicate with Ms. Davis and was under the impression that he had met the reporting requirements via the verbal communications with Ms. Davis. Mr. Ganje adds that the City did not initiate this release but rather the act was that of vandalism. Mr. Ganje noted an issue with a downstream property owner as well as issues with the CRST. Ms. Davis states that the USEPA does require as per the permit a written response inclusive of corrective action and this written response was not received in March-August. Hence a Findings of Violation and Order for Compliance under Section 309 of Docket No. CWA-08-2010-0040 was issued.

3. City Request:

Since the US EPA is now taking action against the City of Eagle Butte, the City of Eagle Butte is requesting copies of this documentation (photos and lab results) for our files and defense purposes.

3. City Response:

It is still our contention that we did not initiate a release / did not perform a lagoon release. That upon receiving information from the USEPA a tampering issue was determined to have occurred whereby immediate and appropriate actions were taken. Finally that the City was under the impression that they had taken the required actions necessary to address this action inclusive of verbal communications with Ms. Davis.

Ms. Davis does submit that the USEPA has an expectation via the permitting documents for the submission of a written response and corrective action. Further as we are responsible for the sewer system inclusive of lagoon, we are thereto responsible for its security.

We do agree that we are responsible for the sewer system inclusive of lagoon and we are thereto responsible for its security. We were of an impression that the system was secure given years and years of no issues. Now that we have had a tampering issue which has shown a weakness in our existing security, we must address the area proven via a tampering episode to now be a weakness. While we have not been able to address the issue due to health and weather, the security breach shall be addressed in 2011 as soon as weather permits.

4. Corrective Action:

There has been much discussion of exactly how to address the accessibility of the valve. A final determination shall be made in January-February 2010 whereby an engineer from Brosz Engineering shall be conferred with. Information pertaining to this action shall be issued to the USEPA as it becomes available and approved by city council.

5. There is one other topic which did arise as a result of verbal communications with USEPA that the City of Eagle Butte does feel must be addressed – Alleged Repeated unapproved discharges:

There have been references made over the years to CRST communications to the USEPA within which the City of Eagle Butte has been accused of repeated unapproved discharges. It is possible that an inspection of our system which included Julie Orr may well have occurred as a result of these allegations from the CRST and this has been communicated as such by the USEPA. While it is clear that surprise inspections by USERPA can or will occur any time, the last inspection was partly as a result of CRST allegations. The repeated references from the CRST have lent for a general error that the allegations must be true due to repeated contacts.

Furthermore upon inspection it was further surmised and therefore alleged that as there was evidence of recent moisture at the discharge site, the City was in "FACT" likely discharging without permission. It is a fact that the storm sewer for much of the City of Eagle Butte from two directions diverges, pools and crosses the road at the exact same location for the discharge of the lagoon. It was logical and cost effective to have the waters flow across the highway from one point. Therefore "evidence of moisture" at this location is not a determination of discharge. Furthermore in spite of repeated allegations of unapproved discharges by the City of Eagle Butte there has been no contact by the CRST or USEPA regarding each of these allegations inclusive of dates and therefore the City has not been afforded an opportunity to dispute these allegations or defend themselves. We are assumed guilty and not afforded an opportunity to prove our innocence. Yes there is now an issue on March 2010 – the first the City of Eagle Butte has had an opportunity to respond to BUT there is a mindset that the City of Eagle Butte has repeatedly committed this act but this is the first whereby evidence is in place. Furthermore the CRST alleges our repeated violations and then our system is tampered with? Nonetheless it is especially clear given this scenario that we must protect ourselves from vandalism and authorized access as well as other assaults.

6. The City of Eagle Butte does now have 4 options available to them as a result of the Findings of Violation (action in process):

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- a. ~~Accept and pay the full penalty.~~
 - b. Appeal the issue via a court or legal process which shall include hiring and paying for an attorney to defend the City of Eagle Butte.
 - c. Complete paperwork for the purpose of proving the City of Eagle Butte's inability to pay the proposed fine.
 - d. Issue a counteroffer for a lesser dollar amount to paid as a fine imposed by the USEPA.

There shall be a phone conference to review these matters on 01/05/2010 at 1:00 p.m. Any City Council member wishing to attend this conference should contact Sheila Ganje as soon as possible.

SJG