



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10
1200 Sixth Avenue
Seattle, WA 98101

May 8, 2000

Reply To
Attn Of: OW-133

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Howard Arlt, Mayor
City of Stites
P.O. Box 300
Stites, Idaho 83552

Re: Request for Information and Compliance Order
Docket No. CWA-10-2000-0064 and
Administrative Complaint
Docket No. CWA-10-2000-0063

Dear Mayor Arlt:

Enclosed is a Request for Information and Compliance Order that the U.S. Environmental Protection Agency ("EPA") has issued to you pursuant to Sections 308 and 309 of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319, respectively. This Compliance Order requires you to apply for a National Pollution Discharge Elimination System ("NPDES") Permit, monitor for certain pollutants, and take certain other steps to ensure compliance with the Clean Water Act.

In addition to the Compliance Order, enclosed is an administrative Complaint which EPA is issuing to you pursuant to Section 309(g) of the Act as a result of EPA's determination that the City of Stites ("Stites") has unlawfully discharged pollutants from the Stites' wastewater treatment facility into waters of the United States in violation of Section 301 (a) of the Act, 33 U.S.C. § 1311(a). The Complaint proposes that a penalty of \$12,000 be assessed against Stites for the violation. Pursuant to the Clean Water Act and in accordance with EPA's penalty policies, any final penalty assessed in this case will reflect the ability of Stites to pay. As a general practice, EPA does not assess civil penalties that are clearly beyond the means of the violator.


The Administrative Procedure Act, 5 U.S.C. § 551, et seq. and 40 C.F.R. Part 22 ("Part 22 Rules") establish the procedures governing this case. A copy of the Part 22 Rules is enclosed. In accordance with Section 22.18(a) of the Part 22 Rules, Stites may resolve this action at any time (after ten days have elapsed following the close of the public comment period) by mailing the proposed penalty in full to EPA. Stites also has the right to a hearing to contest the factual allegations in the Complaint. If Stites admits the allegations, or if found to be true after Stites has had an opportunity for a hearing, Stites has the right to contest the penalty

proposed in the Complaint. Please note the requirements for an Answer in Sections 22.15 and 22.17 of the Part 22 Rules. If Stites wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, Stites must file an Answer within thirty (30) days of the receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

If Stites does not file an Answer within thirty days, Stites may be found in default. If Stites is found in default, each allegation in the Complaint will be deemed to be admitted as true by Stites. If a default order is entered, Stites will have waived the right to appear in this action for any purpose and will also have waived the right to be notified of any EPA proceedings that occur before a civil penalty may be imposed. Upon default, the Presiding Officer may find Stites liable for the full civil penalty proposed in the Complaint.

Stites has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA. If you have any questions, wish to discuss a settlement of this matter with EPA by an informal conference, or would like to receive an extension of the thirty day deadline to file an Answer in order to discuss settlement of this case, please contact Cara Steiner-Riley, Assistant Regional Counsel, at (206) 553-1142. A settlement discussion neither relieves you of the need to file an Answer to the Complaint, nor affects what you may choose to say in an Answer.

Sincerely,

Randall F. Smith
Director
Office of Water

Enclosures

RECEIVED

00 MAY -8 AM 9:32

HEARINGS CLERK
EPA -- REGION 10

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington

In the matter of:)	DOCKET NO. CWA-10-2000-0063
City of Stites)	COMPLAINT
Idaho County, Idaho)	Proposal to Assess Class II
Respondent.)	Civil Penalty Under Section
)	309(g)(2)(B) of the
)	Clean Water Act

I. AUTHORITIES

1. This administrative complaint for civil penalties ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated it to the Director of the EPA Region 10 Office of Water.

2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against the City of Stites ("Respondent") for the unlawful discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. ALLEGATIONS

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2 3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by
3 any person into navigable waters of the United States, except, *inter alia*, as authorized by a National
4 Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the
5 Act, 33 U.S.C. § 1342. Section 504(12) of the Act, 33 U.S.C. § 1362(12), defines the term
6 “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point
7 source.”

8 4. Respondent operates a domestic wastewater treatment facility (“Facility”) located in Stites,
9 Idaho.

10 5. Respondent is a municipality and therefore a “person” within the meaning of Section
11 502(5) of the Act, 33 U.S.C. § 1365(5).

12 6. The Facility is a “point source,” within the meaning of Section 502(14) of the Act, 33
13 U.S.C. § 1362(14).

14 7. Respondent discharges wastewater from the Facility into the South Fork of the Clearwater
15 River.

16 8. The wastewater described in Paragraph 7 above contains fecal coliform, total suspended
17 solids, and other “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

18 9. The South Fork of the Clearwater River is “navigable waters” within the meaning of
19 Section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” within the
20 meaning of 40 C.F.R. Part 122.2.

21 10. The discharge of wastewater described in Paragraph 7 above constitutes a “discharge of
22 pollutants” within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12), from a “point
23 source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

24 11. EPA issued NPDES Permit ID0020346 (“Permit”) to the Respondent on January 9,
25 1986. The Permit expired on January 8, 1991. Respondent has not reapplied for a permit.

26 12. Since the Permit expired, Respondent has continued to discharge wastewater from its
27 Facility into the South Fork of the Clearwater River.

28

1 that can be caused by these microorganisms can result in gastroenteritis, fever, kidney failure and
2 even death.

3 17. By avoiding or delaying the costs associated with implementing waste management
4 controls that would have ensured compliance with the Act, Respondent realized economic benefit as a
5 result of the violations alleged above.

6 18. Based on information currently available to EPA, Respondent has the ability to pay the
7 proposed penalty.

8
9 **IV. OPPORTUNITY TO REQUEST A HEARING**

10 19. Respondent has the right to file an Answer requesting a hearing on any material fact
11 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,
12 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in
13 accordance with provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C.
14 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

15 20. Respondent's Answer, including any request for hearing, must be in writing and must be
16 filed with:

17 Regional Hearing Clerk
18 U.S. Environmental Protection Agency
19 1200 Sixth Avenue, Mail Stop ORC-158
20 Seattle, Washington 98101

21 **V. FAILURE TO FILE AN ANSWER**

22 21. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must
23 file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after
24 service of this Complaint.

25 22. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly
26 admit, deny, or explain each of the factual allegations contained in this Complaint with regard to
27 which Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances
28 or arguments which are alleged to constitute the grounds of any defense; (2) the facts which

1 Respondent intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny,
2 or explain any material factual allegation contained herein constitutes an admission of the allegation.

3
4 **VI. INFORMAL SETTLEMENT CONFERENCE**

5 23. Whether or not Respondent requests a hearing, Respondent may request an informal
6 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of
7 settling this matter. To request such a settlement conference, Respondent should contact:

8 Cara Steiner-Riley
9 Assistant Regional Counsel
10 U.S. Environmental Protection Agency, Region 10
11 1200 Sixth Avenue, Mail Stop ORC-158
12 Seattle, Washington 98101
13 (206) 553-1142

14 24. Note that a request for an informal settlement conference dose not extend the thirty (30)
15 day period for filing a written answer to this Complaint, nor does it waive Respondent's right to
16 request a hearing.

17 **VII. RESERVATIONS**

18 25. Neither assessment nor payment of an administrative civil penalty pursuant to this
19 Complaint shall affect Respondent's continuing obligations to comply with: (1) the Clean Water Act
20 and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act
21 permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of the Act, 33
22 U.S.C. § 1319(a), concerning the violations alleged herein.

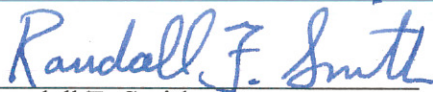
23 **VIII. QUICK RESOLUTION AND SETTLEMENT**

24 26. In accordance with Section 22.18 of the Consolidated Rules of Practice, Respondent may
25 resolve this action at any time after ten (10) days following the close of public comment on this
26 Complaint by mailing the proposed penalty in full to:

27 EPA Region 10 Hearing Clerk
28 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903

1 27. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of
2 Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually
3 related proceedings with the Administrator, the Environmental Appeals Board or its members, the
4 Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person who
5 is likely to advise these officials in the decision on the case.

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7 Dated this 13th day of May, 2000.

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10 Randall F. Smith
11 Director
12 Office of Water
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CERTIFICATE OF SERVICE

I certify that the foregoing "Complaint" was sent to the following persons, in the manner specified, on the date below:

Original and one copy hand-delivered:

Mary Shillcutt, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Copy, together with a cover letter and copy of the Part 22 Rules, by certified mail, return receipt requested:

Howard Arlt, Mayor
City of Stites
P.O. Box 300
Stites, Idaho 83552

Dated: May 8, 2000

Lydia Arneson
Lydia Arneson
U.S. EPA Region 10