



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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

AUG 21 2008

Ref: 8ENF-W

Larry Vandersloot  
Superintendent of Public Works  
City of Hardin  
406 North Cheyenne Street  
Hardin, MT 59034

Re: Findings of Violation and  
Administrative Order for Compliance  
Docket No. **CWA-08-2008-0021**

Dear Mr. Vandersloot:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that the City of Hardin (the "City") is in violation of the Clean Water Act, as amended ("CWA" or the "Act"). The CWA prohibits, among other things, the discharge of pollutants into waters of the United States except as in compliance with the terms of a permit issued under section 402 of the Act. See 33 U.S.C. § 1311. An inspection of the City's waste water treatment plant on March 6, 2008, identified numerous violations of the City's national pollutant discharge elimination system ("NPDES") permit number MT0030759 (the "Permit"). Specifically, EPA found violations of the Permit's monitoring requirements, effluent limitations for fecal coliform, and reporting and record-keeping requirements.

Enclosed is an EPA Region 8 administrative 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 section 309(a)(3) of the Act, 33 U.S.C. § 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.

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 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

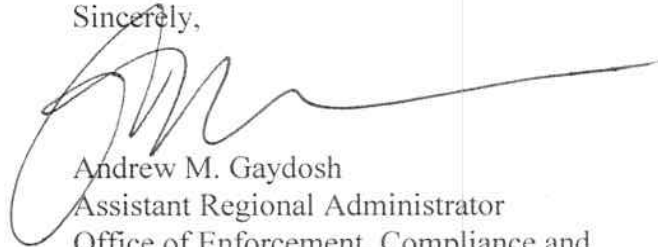


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to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the Act, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the order.

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 David Rise, NPDES Program, at 406-457-5012.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal flourish extending to the right.

Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosure

cc: Tina Artemis, EPA, Regional Hearing Clerk  
Carl Venne, Chairman, Crow Tribal Council  
Roberta Fitch Harjo, Director, Crow Tribe Environmental Program

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2008 AUG 21 AM 10:42

EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:	)	<b>FINDINGS OF VIOLATION</b>
	)	<b>AND</b>
The City of Hardin	)	<b>ORDER FOR COMPLIANCE</b>
406 North Cheyenne Street	)	
Hardin, Montana 59034	)	Proceeding under Sections 308(a) and
	)	309(a) of the Clean Water Act, 33 U.S.C.
NPDES Permit No. MT0030759	)	§§ 1318(a) and 1319(a)
	)	
Respondent.	)	Docket No. <b>CWA-08-2008-0021</b>
_____	)	

**STATUTORY AUTHORITY**

The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to section 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 sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. This Order is also issued pursuant to section 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 Hardin (“Respondent”) is a “municipality,” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4), with offices located at 406 North Cheyenne Street, Hardin, Montana.

2. A municipality is a “person” within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. Respondent owns and operates a wastewater treatment plant (the “Facility”) located in Section 24, Township 1 South, Range 33 East. The Facility discharges treated wastewater into the Bighorn River and has a design capacity of one million gallons per day (“MGD”) and an average daily flow of .368 MGD.
4. The Facility is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
5. The Bighorn 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 section 502(7) of the Act, 33 U.S.C. § 1362(7).
6. Wastewater and fecal coliform are each a “pollutant” within the meaning of section 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 section 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/or, under certain circumstances, the State, to permit discharges into navigable waters, subject to specific terms and conditions.
9. The Facility is located within the external boundaries of the Crow Reservation, which is “Indian Country” as defined at 18 U.S.C. § 1151. EPA has jurisdiction over the NPDES

- program within Indian Country, and, therefore, over the Facility.
10. EPA issued NPDES permit number MT0030759 (the "Permit"), effective September 1, 2006, which authorizes Respondent to discharge from the Facility in accordance with section 402 of the Act, 33 U.S.C. § 1342.
  11. Section 1.3.1 of the Permit sets forth the following limitations for fecal coliform in effluent discharged by the Facility from April 1 - October 31:
    - a. 30-day average: 200 organisms/100 ml; and
    - b. 7-day average: 400 organisms/100 ml.
  12. Section 1.1 of the Permit states, in part, that the geometric mean shall be calculated for the 30-day average and 7-day average for fecal coliform.
  13. Section 1.3.2 of the Permit sets forth, in part, the following self-monitoring requirements:
    - a. Weekly monitoring of total biological oxygen demand ("BOD<sub>5</sub>") using a composite sample;
    - b. Weekly monitoring of total suspended solids ("TSS") using a composite sample;
    - c. Annual monitoring of arsenic, cadmium, chromium, copper, lead, molybdenum, nickel, selenium, silver, and zinc using a composite sample; and
    - d. Quarterly monitoring of whole effluent toxicity ("WET") using a composite sample.
  14. Section 2.2 of the Permit states that monitoring required by the Permit must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in the Permit.

15. Section 2.4 of the Permit requires that effluent monitoring results obtained during the previous month be summarized and reported on one Discharge Monitoring Report Form (“DMR”), postmarked no later than the 28<sup>th</sup> day of the month following the completed reporting period. If no discharge occurs during the reporting period, “no discharge” shall be reported.
16. Section 2.6 of the Permit states that the following information shall be included in records of monitoring:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The initials or name(s) of the individuals who performed the sampling or measurements;
  - c. The date(s) analyses were performed;
  - d. The time(s) analyses were initiated;
  - e. The initials or name(s) of individual(s) who performed the analyses;
  - f. References and written procedures, where available, for the analytical techniques or methods used; and
  - g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.
17. Section 2.8 of the Permit requires that a violation of a maximum daily discharge limitation for any of the pollutants listed in the Permit must be reported within 24 hours.
18. Section 3.5 of the Permit requires proper operation and maintenance of the Facility, including adequate laboratory controls and appropriate quality assurance procedures. Section 3.5.2 further states that the permittee shall maintain a daily log in a bound

notebook(s) containing a summary of all operation and maintenance activities at the Facility.

19. Sections 4.7 and 4.7.2 of the Permit state that all reports or information submitted to the Director (the Regional Administrator of EPA Region 8 or an authorized representative) shall be signed by a principal executive officer, ranking elected official, or duly authorized representative such a person, as described in Section 4.7.2.1.
20. On March 6, 2008, inspectors from EPA conducted a routine compliance inspection of the Facility. The following violations were noted:
  - a. Monitoring of BOD<sub>5</sub> and TSS was not being conducted according to test procedures approved under 40 C.F.R. Part 136, in violation of Section 2.2 of the Permit;
  - b. There was no evidence that composite samples were being collected for BOD<sub>5</sub>, TSS, metals, and WET analyses, in violation of Section 1.3.2 of the Permit;
  - c. The 7-day and 30-day averages for fecal coliform were not calculated as geometric means in 2007, in violation of Section 1.1 of the Permit;
  - d. The 30-day average for fecal coliform exceeded the permit effluent limit in April, May, June, July, August, and September of 2007, in violation of Section 1.3.1 of the Permit and section 301 of the Act, 33 U.S.C. § 1311;
  - e. The 7-day average for fecal coliform exceeded the permit effluent limit in April, May, June, July, and September of 2007, in violation of Section 1.3.1 of the Permit and section 301 of the Act, 33 U.S.C. § 1311;

- f. Violations of the maximum daily discharge limitation for fecal coliform were not reported to EPA within 24 hours, in violation of Section 2.8.2.3 of the Permit;
- g. Sampling and analytical records did not contain all of the information required to be included in the record of monitoring, in violation of Section 2.6 of the Permit;
- h. Laboratory controls and appropriate quality assurance were inadequate, and a daily log in a bound notebook containing a summary of all operation and maintenance activities was not maintained, in violation of Sections 3.5 and 3.5.2 of the Permit;
- i. DMRs were not signed by an authorized person, in violation of Section 4.7 of the Permit; and
- j. No DMR was submitted for December 2007, in violation of Section 2.4 of the Permit.

**ORDER**

Based on the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated 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) calendar days of receipt of this Order, Respondent shall submit to EPA a plan and schedule for developing and implementing all necessary measures to fully and properly comply with the terms of the Permit, including, but not limited to:
  - a. Establishing written standard operating procedures for NPDES Permit compliance. Such measures shall include, but are not necessarily limited to:
    - I. Developing sampling worksheets to ensure that all samples are of the correct type and are collected at the measurement weir for effluent samples and at the Facility headworks for influent samples;
    - ii. Establishing adequate laboratory practices to ensure that all analyses are repeatable and conducted using methods approved in 40 C.F.R. Part 136;
    - iii. Developing quality assurance and quality control procedures to ensure that analytical data produced by the Facility laboratory are reliable, defensible, and valid;
    - iv. Developing operation and maintenance record-keeping logbooks containing the information required by the Permit; and
    - v. Establishing reporting procedures to ensure correct reporting of analytical data to EPA.

- b. Modifications to the Facility's operating practices or changes to the design and construction of the Facility as necessary to ensure that all effluent limitations are met.

Upon review and approval of the plan and schedule by EPA, both will become enforceable parts of this Order. In no event shall the schedule extend beyond twelve (12) months from the effective date of this Order.

3. Until written approval by EPA of the plan and schedule developed pursuant to paragraph 2 of this Order, above, Respondent shall contract with a commercial laboratory for all influent and effluent analyses required by the Permit. Respondent shall obtain instructions from the commercial laboratory on proper sampling and sample handling.
4. Within ninety (90) calendar days of receipt of this Order, Respondent shall report to EPA at the phone numbers listed in Section 2.8.1 or 2.8.2 of the Permit all violations of permit effluent limits for the pollutants listed in the Permit that have occurred since November 1, 2007.
5. All written notices, correspondence, plans, schedules, and reports required by this Order shall be sent to the following address:  
  
David Rise  
U.S. Environmental Protection Agency, Region 8  
Montana Office  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59626
6. All written notices, 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:

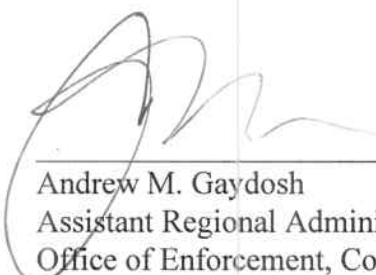
“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage 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.”

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 section 309 of the Act, 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. Please be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation of section 301 of the Act, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, section 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.

10. 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.
11. This Order shall be effective upon receipt by Respondent.

DATED this 21st day of August, 2008.



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Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice