

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 30 PM 2:19

In the Matter of:)
)
City of Polson, Montana) **ADMINISTRATIVE ORDER**
) **FOR COMPLIANCE**
)
Respondent.) Docket No. **CWA-08-2008-0030**

This Administrative Order for Compliance (“Order”) is issued pursuant to section 309(a)(3) of the Clean Water Act (the “Act”), 33 U.S.C. §1319(a)(3), which authorizes the Administrator of the United States 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 any such sections of the Act. This Order is also issued pursuant to section 308(a) of the Clean Water Act, 33 U.S.C. §1318(a), which authorizes the Administrator of the EPA to require reports necessary to determine compliance. These authorities have been delegated to the undersigned official.

BACKGROUND

1. In order to restore and maintain the integrity of the nation’s water, section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. §1342.

2. Section 402 of the Act, 33 U.S.C. §1342, establishes a National Pollutant Discharge Elimination System (“NPDES”) program, under which the EPA may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.
3. The City of Polson (“Respondent”) is a political subdivision of the State of Montana.
4. The Respondent is a municipality and therefore a “person” as that term is defined in section 502(5) of the Act, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2.
5. Effective July 1, 2007, the EPA issued NPDES Permit No. MT-0020559 (the “Current Permit”), authorizing the Respondent to discharge treated effluent from the Respondent’s wastewater treatment facility (the “Facility”) to the Flathead River, in accordance with the conditions set forth in the Current Permit.
6. From January 15, 2001, until July 1, 2007, the Respondent was authorized to discharge treated effluent from the from the Facility to the Flathead River in accordance with the conditions of a previous version of NPDES Permit No. MT-0020559 (the “2001 Permit”). The 2001 Permit was due to expire on June 30, 2005, and was administratively extended until the Current Permit was issued.
7. The Flathead River is a “navigable water” and part of the “waters of the United States,” as those terms are defined in section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §122.2, respectively.
8. The Facility is located on the Flathead Indian Reservation in northwestern Montana.
9. The Confederated Salish and Kootenai Tribes (“Tribes”) do not own, manage, or control the Facility, according to a June 4, 2008, letter from James H. Steele, Jr., Chairman of the Tribal Council, to David Rise, US EPA Montana Office.

10. The Respondent is subject to the requirements of the Act, the Current Permit, and the EPA's regulations implementing the Act.
11. Prior to July 1, 2007, the Respondent was subject to the requirements of the Act, the 2001 Permit, and the EPA's regulations implementing the Act.
12. Section I.C.2 of the 2001 Permit required the Respondent to monitor the Facility's effluent monthly for flow, biological oxygen demand ("BOD₅"), total suspended solids ("TSS"), pH, ammonia, and oil and grease, and monthly from April 1 through October 31 of each year for fecal coliform.
13. Section 1.3.2 of the Current Permit requires the Respondent to monitor the Facility's effluent weekly for flow and effluent BOD₅.
14. Section 1.3.2 of the Current Permit requires the Respondent to monitor its influent monthly for influent BOD₅ and to monitor its effluent monthly for TSS, E. coli, pH, and oil and grease.
15. Section I.C.2 of the 2001 Permit required the Respondent to monitor the Facility's effluent quarterly for nitrate and for nitrite.
16. Section 2.4 of the Current Permit requires the Respondent to submit effluent monitoring results for each month to the EPA and the Tribes, using a Discharge Monitoring Report ("DMR"). Each DMR is to be on EPA Form No. 3320-1 and is to be postmarked no later than the 28th day of the month following the end of the completed monitoring period. If no discharge occurs during the reporting period, the Respondent must report "no discharge."

17. Section II.D of the 2001 Permit required the Respondent to submit effluent monitoring results for each month to the EPA on monthly DMRs, each of which was to have been postmarked no later than the 28th day of the month following the end of the completed monitoring period. For any month with no discharge, the Respondent was required to indicate “no discharge” on the DMR.
18. With letters dated May 9, 2007, and August 27, 2007, the EPA provided the Respondent with DMR forms to be used in order to meet the requirements of section 2.4 of the Current Permit.
19. By letter dated August 25, 2008, the EPA requested DMRs from the Respondent for the months of April, May, and June of 2007 and for the first six months of 2008. To date, the Respondent has not submitted any DMRs for these months.
20. After receiving the EPA’s August 25, 2008, letter, the Respondent provided the EPA with analytical results for some pollutants, but no DMRs.
21. Section I.C.1 of the 2001 Permit prohibited the effluent from the Facility from exceeding 30 milligrams per liter (mg/l) of BOD₅, as a 30-day average.
22. Section I.C.1 of the 2001 Permit prohibited the effluent from the Facility from having a pH of less than 6.0 or greater than 9.0 standard units (s.u.).
23. Section 1.3.1 of the Current Permit prohibits the effluent from the Facility from exceeding 30 mg/l of BOD₅, as a 30-day average.
24. Section 2.9 of the Current Permit and section II.I of the 2001 Permit each require the Respondent to report any instances of noncompliance with permit conditions (other than noncompliance which may endanger health and environment, which must be reported

within 24 hours) to EPA and the Tribes at the time that monitoring reports are submitted, with each report by the Respondent to specify (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.

VIOLATIONS

25. For the months of April, May, and June of 2007, the Respondent failed to submit any DMRs to the EPA, in violation of section II.D of the 2001 Permit.
26. For the months of January through July of 2008, the Respondent failed to submit any DMRs to the EPA or the Tribes, in violation of section 2.4 of the Current Permit.
27. For the months of August, October, November, and December of 2007, the Respondent submitted DMRs to the EPA, but none of these DMRs had been postmarked by the 28th day of the month following the completed reporting period, in violation of section 2.4 of the Current Permit.
28. The Respondent failed to monitor the Facility's effluent weekly for flow for the first twenty-five weeks of 2008, in violation of section 1.3.2 of the Current Permit.
29. The Respondent failed to monitor the Facility's effluent monthly for flow during the months of April, May, and June of 2007, in violation of section I.C.2 of the 2001 Permit.
30. The Respondent failed to monitor the Facility's effluent weekly for BOD₅ for sixteen of the first twenty-four weeks of 2008, in violation of section 1.3.2 of the Current Permit.

31. The Respondent failed to monitor the Facility's influent BOD₅ monthly for five of the first six months of 2008, in violation of section 1.3.2 of the Current Permit.
32. The Respondent failed to monitor BOD₅ in the Facility's effluent for the months of April, May, and June of 2007, in violation of I.C.2 of the 2001 Permit.
33. The Respondent failed to monitor the Facility's effluent monthly for TSS for the first seven months of 2008, in violation of section 1.3.2 of the Current Permit.
34. The Respondent failed to monitor the Facility's effluent monthly for TSS during the months of April, May, and June of 2007, in violation of section I.C.2 of the 2001 Permit.
35. The Respondent failed to monitor the Facility's effluent monthly for E.coli for the first two months of 2008, in violation of section 1.3.2 of the Current Permit.
36. The Respondent failed to monitor the Facility's effluent monthly for fecal coliform for the months of April, May, and June of 2007, in violation of section I.C.2 of the 2001 Permit.
37. The Respondent failed to monitor the Facility's effluent monthly for pH for the first seven months of 2008, in violation of section 1.3.2 of the Current Permit.
38. The Respondent failed to monitor the Facility's effluent for oil and grease for the first two months of 2008, in violation of section 1.3.2 of the Current Permit.
39. The Respondent failed to monitor the Facility's effluent for nitrate in the second quarter of 2007, in violation of section I.C.2 of the 2001 Permit.
40. The Respondent failed to monitor the Facility's effluent for nitrite in the second quarter of 2007, in violation of section I.C.2 of the 2001 Permit.

41. The Respondent allowed the concentration of BOD₅ in the Facility's effluent to exceed 30 mg/l as a 30-day average in March of 2006 and May of 2006, in violation of section I.C.1 of the 2001 Permit.
42. The Respondent allowed the pH in the Facility's effluent to exceed 9.0 s.u. in May of 2006, in violation of section I.C.1 of the 2001 Permit.
43. The Respondent allowed the concentration of BOD₅ in the Facility's effluent to exceed 30 mg/l as a 30-day average in March 2007 and November of 2007, in violation of section 1.3.1 of the Current Permit.
44. The Respondent failed to provide EPA with any notification of the Respondent's noncompliance with conditions of the 2001 Permit, in violation of section II.I of the 2001 Permit.
45. The Respondent failed to provide EPA with any notification of the Respondent's noncompliance with conditions of the Current Permit, in violation of section 2.9 of the Current Permit.

ORDER

1. Effective immediately, the Respondent shall perform all monitoring required by Section 1.3.2 of the Current Permit, including monitoring the Facility's (a) effluent weekly for flow and BOD₅, (b) influent monthly for BOD₅, and (c) effluent monthly for TSS, E. coli, pH, and oil and grease.

2. Effective immediately, the Respondent shall submit monthly DMRs to the EPA and the Tribes, using EPA Form No. 3320-1 and postmarking each DMR no later than the 28th day of the month following the completed reporting period, as required by section 2.4 of the Current Permit.
3. Effective immediately, the Respondent shall not allow the 30-day average concentration of BOD₅ in the Facility's effluent to exceed 30 mg/l.
4. Effective immediately, the Respondent shall not allow the pH of the Facility's effluent to exceed 9.0 or be less than 6.0.
5. No later than ten days after receiving this Order, the Respondent shall submit to the EPA and the Tribes any monitoring results for the Facility that the Respondent has not previously submitted to EPA and the Tribes.
6. No later than ten days after receiving this Order, the Respondent shall submit to the EPA and the Tribes DMRs for each of the months of April, May, and June of 2007 and January through June of 2008.
7. No later than thirty days after receiving this Order, the Respondent shall submit to EPA and the Tribes a written explanation of the reasons for each violation cited in this Order and a description of the steps Respondent has taken and intends to take to ensure future compliance with the Current Permit.
8. All notices and reports required by this Order to be given to the EPA shall be given to:

David Rise (8MO)
U.S. EPA Region 8, Montana Office
10 W 15th Street, Suite 3200
Helena, MT 59626

9. All notices and reports required by this Order to be given to the Tribes shall be given to:

Confederated Salish and Kootenai Tribes
Environmental Protection Division
301 Main St.
Polson, MT 59860

10. 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 the 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.

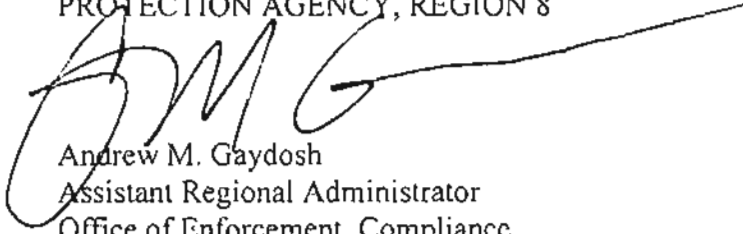
11. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject the Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. §1319.

12. 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 \$32,500 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.

13. 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 Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

Dated this 31st day of September, 2008.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8



Andrew M. Gaydosh
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:

Tony Porranzo
Water / Sewer Superintendent
City of Polson
106 1st Street E
Polson, MT 59860-2137

Ashley Walker
Head Sewer Operator
230 Kerr Dam Road
Polson, MT 59860

Date: 9/30/08

By: Judith M. McTernan
Judith McTernan