



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2013 APR 10 PM 1:49

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2012-0035

IN THE MATTER OF:

CITY OF POLSON, MONTANA

RESPONDENT

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)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 10th DAY OF April, 2013.

Elyana R. Sutin
Regional Judicial Officer

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
City of Polson, Montana,)
)
) Docket No. CWA-08-2012-0035
)
Respondent) CONSENT AGREEMENT
)
_____)

Complainant United States Environmental Protection Agency Region 8 (EPA) and the City of Polson, Montana (Respondent), by their undersigned representatives, hereby consent and agree as follows:

1. On February 14, 2013, the EPA filed a First Amended Complaint and Notice of Opportunity for Hearing (Amended Complaint), alleging that the Respondent violated the terms of two Clean Water Act National Pollutant Discharge Elimination System permits. The Amended Complaint proposed that the Respondent pay an administrative civil penalty for its violations, pursuant to section 309(g) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g).

2. The Respondent admits the jurisdictional allegations of the Amended Complaint and neither admits nor denies the specific factual allegations of the Amended Complaint. The Respondent does not admit to any violations of the Act or to any wrongdoing.

3. The Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Amended Complaint or in this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon the Respondent and the Respondent's successors and assigns. Any change in the Respondent's ownership or operation of the wastewater treatment plant at issue, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this Consent Agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. The Respondent consents and agrees to pay a civil penalty in the amount of forty thousand two hundred dollars (\$40,200.00) in the manner described below:

- a. Payment shall be in two installments. The first payment, which is to be in the amount of \$20,000, is due no later than thirty calendar days from the date of the Final Order by the Regional Judicial Officer adopting this Consent Agreement. The second payment, which is to be in the amount of \$20,200 (an amount that includes interest), is due no later than one year after the date of the Final Order. If the due date for any payment falls on a weekend or legal federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, described below. Payment must be received by 11:00 AM Eastern Standard Time to be considered as received that day.
- b. Each payment shall be made by remitting a cashier's or certified check, or making a wire transfer or on-line payment, including the name and docket number of this case, for the amount stated in part "a," above, payable to "Treasurer, United States of America," as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If sent by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA: 021030004
Account Number: 68010727

Each payment may also be made on-line by accessing "www.pay.gov."

A copy of each check (or notification of wire transfer or on-line payment) shall be sent simultaneously to:

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

and

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

- c. If any payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if any payment is not received within 30 days of

the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

- e. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve the Respondent of the duty to comply with the Act, its implementing regulations, and any permit issued pursuant to the Act.

7. Any failure by the Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of the Respondent's failure to perform pursuant to the terms of this Consent Agreement.

9. The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

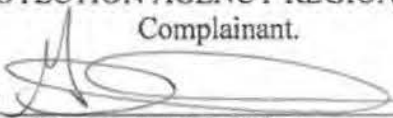
11. Each party shall bear its own costs and attorney fees in this matter.

12. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement


of the United States' claims for civil penalties for the specific violations alleged in the Amended
Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant.

Date: 04/10/13

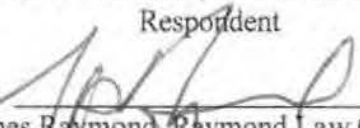
By: 
Gwen Campbell, Unit Chief
NPDES Enforcement Unit
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Date: 4/9/13

By: 
James H. Eppers
Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

CITY OF POLSON, MONTANA,
Respondent

Date: 4/2/13

By: 
James Raymond, Raymond Law Office, PLLC
Polson City Attorney
At the direction of the Polson City Council

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **CITY OF POLSON, MONTANA; DOCKET NO.: CWA-08-2012-0035** was filed with the Regional Hearing Clerk on April 10, 2013

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt and e-mailed on April 10, 2013 to:

Attorney for Respondent


James Raymond
Raymond Law Office, PLLC
jamesraymond@centurytel.net
407 First Street West
Polson, MT 59860
jamesraymond@centurytel.net

emailed only:

Honorable Susan L. Biro, Chief
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 10, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk



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