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Monday, November 5, 2012

2012 NOV -8 AM 10:50

Tina Artemis  
Regional Hearing Clerk  
US Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

FILED  
EPA REGION VIII  
HEARING CLERK


Re: Complaint and Notice of Opportunity for Hearing  
Docket No. CWA-08-2012-0035

Dear Madam Clerk

Enclosed please find the original and one copy of the City's Response and Request for Hearing, for filing.

Thank you for your time and attention.

v/r/s

  
James Raymond  
Raymond Law Office, PLLC

**BEFORE THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8** 2012 NOV -8 AM 10: 50

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
City of Polson, Montana ) **RESPONSE, AND REQUEST FOR**  
 ) **HEARING**  
Respondent. ) Docket No. CWA-08-2012-0035

Comes now the Respondent, hereinafter City, and herewith enters this Response and Request for Hearing.

Paragraph 1 – 31 of the Complaint recites facts which the City does not dispute.

Paragraph 32 (a) through (d) recites true facts; however, all regulatory issues raised by such facts were resolved with the Confederated Salish & Kootenai Tribes at and about that period of time.

Paragraph 33 can be neither admitted nor denied by the City; all relevant DMRs were in fact submitted however City keeps no record of the date the same were mailed.

Paragraph 34 recites true facts; however, all regulatory issues raised by such facts were resolved with the Confederated Salish & Kootenai Tribes at and about that period of time.

Paragraph 35 merely recites subpart (d) of Paragraph 32 and the same response is incorporated here by reference.

Paragraph 36 recites true facts.

Paragraph 37 merely recites subpart (c) of Paragraph 32 and the same response is incorporated here by reference.

Paragraph 38 recites a true fact with respect to December, 2011; however, the sample for E. Coli taken in October, 2008, was sent to ME Labs for testing, which subsequently mislaid the same, and informed the City of that fact by letter dated November 5, 2008.

Paragraph 39 merely recites subpart (b) of Paragraph 32 and the same response is incorporated here by reference.

Paragraph 40 recites true facts, in that if there is no influent BOD 5 monitoring during any one month, including those months alleged in Paragraph 36 of the Complaint, then a percent removal for such month, including the months alleged in Paragraph 40, cannot be had.

Paragraphs 41 through 44 recite true facts, however those facts are the result of design limitations approved by the several relevant regulatory authorities yet inherent in the Facility constructed according to such approved designs which limitations cannot be addressed except by future upgrades to the Facility.

The City denies any inference or conclusion implied or stated in the Complaint based upon any facts the City has admitted herein.

City disputes the proposed administrative penalty. While some of the missing data is the result of oversight, any actual neglect is minor, at best intermittent and accidental rather than systemic or intentional, and excusable. The City is reviewing and updating its policies and procedures in order to minimize such oversights in future.

The City has realized no cost savings with respect to any allegation of the complaint; its annual budget line for BOD 5, oil and grease is \$2,500.00 annually, and has remained unaffected over the period addressed in the Complaint.

The City disputes that it has “consistently failed to monitor and/or report for numerous pollutants that its permit requires it to sample.” As recited in Prior Compliance History of the complaint, the within is in fact the first enforcement action brought against the City by the Environmental Protection Agency, precisely because the City does consistently monitor, report, and manage the Facility.

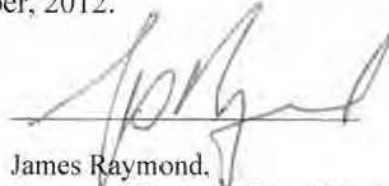
The City alleges that it is entitled to a reduction of the proposed administrative penalty for several reasons:

1. Inability to pay, which it is exploring.
2. Justice requires that rather than a payment of an administrative fine, the Clean Water Act is better served by upgrading the existing Facility. If any fine is assessed, then the same ought in justice be ordered applied to the cost of design and construction of such upgraded facility.

REQUEST FOR HEARING

The City herewith exercises its right to request any hearing necessary to resolve any outstanding issues.

DONE AND DATED this 25<sup>th</sup> day of October, 2012.



James Raymond,  
Raymond Law Office, PLLC

Attorney to Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the persons listed below on the 6 day of NOV, 2012, by placing a copy hereof in the United States Mail, postage prepaid and addressed as follows:

The Honorable Joe Durglo, Chairman  
Confederated Salish & Kootenai Tribes  
PO Box 278  
Pablo, MT 59855

Peggy Livingston  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80202-1129

