

Appendix F

DEQ Notice of Violation for BSB Municipal Wastewater Treatment Plant



FACSIMILE TRANSMITTAL

To: D. Henry Elsen, EPA counsel

Fax #: 457-5056

Date: December 9, 2009

Pages: 13 (including cover sheet)

From: C. Bradley Smith, DEQ counsel

Amended Notice of Violation and Administrative Order on Consent, City and County of Butte-Silver Bow, Silver Bow, Montana, Docket No. WQ-07-07

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**Montana Department of Environmental Quality (DEQ)
Remediation Division Legal Unit
1100 North Last Chance Gulch
PO Box 200901
Helena, MT 59620-0901
Telephone: (406) 841-5000
Facsimile: (406) 841-5050**



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

**Facsimile
TRANSMITTAL**

to: Brad Smith

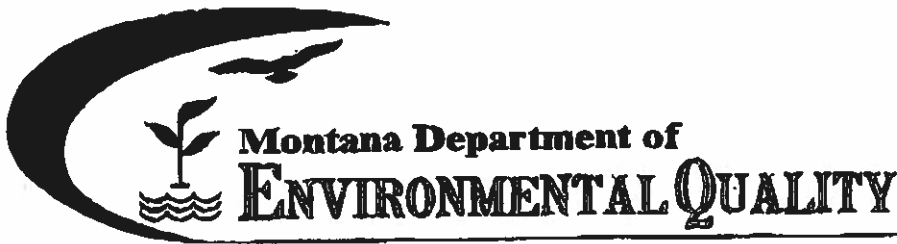
fax #: 406-841-5050

re: BSB AOC

date: December 4, 2009

pages: 11 excluding cover

from: Jim Madden 444-4009
DEQ Legal Counsel



Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

August 28, 2009

Rick Larson, Operations Manager
Department of Public Works
Butte-Silver Bow City / County Government
126 West Granite
Butte, MT 59701

RE: Amended Notice of Violation and Administrative Order on Consent (Amended Order)
Docket No. WQ-07-07, FID #1364

Dear Rick:

Signed copies of the above-referenced Amended Order and the attached signature pages are enclosed for your files. Thank-you and other members of the Butte-Silver Bow staff for the cooperation in this matter. If you have any comments or questions, please feel free to call me.

Sincerely,

John L. Arrigo
Administrator
Enforcement Division
(406) 444-5327; fax (406) 444-1923
jarrigo@mt.gov

Enc.

cc w/Enc: Jenny Chambers, Water Protection Bureau
Jim Madden, Legal
Paul LaVigne, Technical and Financial Assistance Bureau
Julie DalSoglio, EPA Region 8, Montana Office

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**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA**

**IN THE MATTER OF:
MPDES PERMIT REQUIREMENTS UNDER
THE MONTANA WATER QUALITY ACT,
CITY AND COUNTY OF BUTTE - SILVER
BOW, SILVER BOW, MONTANA. (FID #1364)**

**AMENDED
NOTICE OF VIOLATION
AND ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. WQ-07-07

This Amended Notice of Violation and Administrative Order on Consent (Amended Consent Order) supersedes the Notice of Violation and Administrative Order on Consent (Order), Docket No. WQ-07-07, entered into between the Department of Environmental Quality (Department) and the City and County of Butte-Silver Bow (BSB) on May 15, 2008.

I. NOTICE OF VIOLATION

Pursuant to the authority of Sections 75-5-611 and 75-5-613, Montana Code Annotated (MCA), the Department hereby gives notice to BSB of the following Findings of Fact and Conclusions of Law with respect to violations of the Montana Water Quality Act (WQA), Sections 75-5-101, *et seq.*, MCA, and rules adopted under the WQA found at Administrative Rules of Montana (ARM) Title 17, chapter 30.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Environmental Quality (Department) is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.

2. BSB is a local governmental entity within the State of Montana and is, therefore, a "person" as defined in Section 75-5-103(23), MCA.

3. Section 75-5-605(1)(b), MCA, states it is unlawful to violate any provision set forth in a permit, or stipulation, including but not limited to limitations and conditions contained

1 in the permit. ARM 17.30.1342(1) requires that the permittee shall comply with all permit
2 conditions. ARM 17.30.1342(5) requires that the permittee shall, at all times, properly operate
3 and maintain all facilities and systems of treatment and control to achieve compliance with the
4 conditions of its permit.

5 4. The Department issued BSB MPDES Permit No. MT-0022012 (Permit). This
6 Permit was issued on September 29, 2006 and is effective November 1, 2006 through October
7 31, 2011. New effluent limits for Total Nitrogen, Total Phosphorus and Chlorine become
8 effective January 1, 2009 and are applicable to discharges from June 1 through September 30 of
9 each year.

10 5. BSB is in the process of upgrading its wastewater treatment plant. The upgrades
11 are intended to provide for treatment that will comply with all effluent limits in the Permit. BSB
12 is using best efforts to implement the upgrades in a timely fashion, but the upgrades will not be
13 completed by January 1, 2009. The parties anticipate that, on January 1, 2009, BSB's
14 wastewater treatment plant will not be capable of meeting the Permit requirements for the new
15 effluent limits for Total Nitrogen (TN), Total Phosphorus (TP) and Total Residual Chlorine that
16 become effective on that date. The purpose of this Amended Consent Order is to establish a
17 compliance schedule for BSB to implement the planned upgrades to its wastewater treatment
18 plant. In consideration of BSB implementing the identified treatment plant upgrades in
19 accordance with the schedule in this Amended Consent Order and performing certain other
20 interim measures as set out in this Amended Consent Order, BSB and the Department agree that
21 any failure by BSB to meet the effluent limits for TN and TP in the current Permit, or in any
22 amended or re-issued permit, between January 1, 2009 and October 31, 2017, will not result in a
23 formal enforcement action by the Department.

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1 **III. ADMINISTRATIVE ORDER ON CONSENT**

2 This Amended Consent Order is issued to BSB pursuant to the authority vested in the
3 State of Montana, acting by and through the Department under the WQA, Sections 75-5-611 and
4 75-5-613, MCA, and rules adopted thereunder found in ARM Title 17, chapter 30. NOW,
5 THEREFORE, THE DEPARTMENT ORDERS AND BSB AGREES AS FOLLOWS:

6 ***Phase I – Operational Improvements and UV Disinfection***

7 6. On or before November 1, 2008, BSB shall submit maps, plans and specifications
8 for the final design of Phase I. Phase I must include, but is not limited to the following
9 wastewater treatment plant improvements:

- 10 a. New screenings for the washer/compactor;
- 11 b. New grit pump;
- 12 c. New Parshall Flume;
- 13 d. New ultraviolet disinfection system; and
- 14 e. Upgrades for emergency power and the Supervisory Control and Data
15 Acquisition (SCADA) system.

16 The Department acknowledges receipt of the plans and specifications on October 31, 2008,
17 which were approved on November 28, 2008. BSB has fulfilled this requirement.

18 7. By August 1, 2009, BSB shall implement a Chlorine Reduction Plan (Plan) and
19 submit a report on the results of the Plan to the Department. The purpose of the Plan will be for
20 BSB to attempt to meet both *E. coli* and chlorine residual discharge limits within the constraints
21 of current operational abilities and temporary modifications for the period from August 1, 2009
22 through February 28, 2010, at which time full compliance with both limits can be achieved
23 through implementation of the Phase I project.

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1 8. By February 1, 2010, BSB shall complete that portion of the construction of
2 Phase I that results in an operational ultraviolet (UV) disinfection system and certify to the
3 Department in writing, through its professional engineer, that the modifications to the wastewater
4 treatment plant contained in Phase I related to an operational UV system have been constructed
5 in accordance with the approved plans and specifications. Within 90 days of the engineer's
6 certification of the UV system, certify in writing, through its professional engineer, that the
7 complete Phase I project has been constructed in accordance with the approved plans and
8 specifications, and submit certified as-built plans along with a complete final report.

9 *Phase IIA – Biological Nutrient Reduction and Effluent Reuse*

10 9. On or before October 1, 2010, BSB shall submit maps, plans and specifications
11 for the final design of Phase IIA. Phase IIA must include, but is not limited to, the following
12 wastewater treatment plant improvements:

- 13 a. Three stages of a five-stage Biological Nutrient Reduction system;
- 14 b. Return system for activated sludge improvements;
- 15 c. Waste system for activated sludge improvements; and
- 16 d. Detailed plans for effluent reuse though land application to the Sod Farm
17 and additional public or private lands.

18 10. On or before October 1, 2012, BSB shall complete construction and certify to the
19 Department in writing, through its professional engineer, that the modifications to the wastewater
20 treatment plant and the effluent reuse system contained in Phase IIA have been constructed in
21 accordance with the approved plans and specifications. Within 90 days of submittal of the
22 engineer's certification, submit the certified as-builts along with a complete final report.

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1 11. On or before March 1, 2011, BSB shall submit an application and review fees to
2 the Department to renew the Permit. The application must specify additional outfalls used for
3 land application.

4 *Phase IIB - System Evaluation and Additional Nutrient Reduction*

5 12. After construction of Phase IIA is completed and before October 1, 2013, BSB
6 shall complete an evaluation of the wastewater treatment plant improvements to determine if
7 operational performance can be optimized and if the discharge, in conjunction with use of the
8 effluent reuse system, can meet effluent limits for TN and TP in any amended or re-issued
9 Permit.

10 13. By October 1, 2013, BSB shall submit a final report of the results of the evaluation
11 along with recommendations for the need for additional nutrient treatment and removal.

12 14. If the results of the evaluation demonstrate that BSB can meet the effluent limits
13 for TN and TP in any amended or re-issued permit, those effluent limits for TN and TP must be
14 in effect and enforceable as of November 1, 2013.

15 15. If the results of the evaluation demonstrate that BSB cannot meet the effluent limits
16 for TN and TP in any amended or re-issued permit, BSB shall initiate the design of additional nutrient
17 removal through Phase IIB. If BSB initiates Phase IIB, the Department and BSB agree to amend this
18 Consent Order to establish Interim Enforcement Effluent Limits for TN and TP that must be in effect
19 for Outfall 001 as of November 1, 2013.

20 16. If BSB initiates Phase IIB, on or before October 1, 2014, BSB shall submit maps,
21 plans and specifications for the final design of Phase IIB. Phase IIB must include, but is not
22 limited to, the following wastewater treatment plant improvements:

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1 a. The final two stages of the five-stage Biological Nutrient Reduction
2 system; and/or

3 b. Alternative denitrification or filtration treatment systems.

4 17. On or before October 1, 2016, BSB shall complete construction of the approved
5 additional nutrient reduction system(s) and certify to the Department in writing, through its
6 professional engineer, that the Phase IIB modifications have been constructed in accordance with
7 the approved plans and specifications. Within 90 days of the engineer's certification, submit
8 certified as-builts along with a complete final report.

9 **Reports**

10 18. Beginning on January 1, 2010, BSB shall submit annual status reports to the
11 Department that outline progress and updates on activities towards completion of the upgrades.
12 The reports shall be submitted to the Department no later than January 1 of each year.

13 19. All reports, plans and specifications, engineer's certification, as-built plans, status
14 reports, and other documentation required by this Amended Consent Order shall be sent to:

15 John Arrigo, Administrator
16 Enforcement Division
17 Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

18 **Stipulated Penalties**

19 20. BSB shall be liable for a \$500 stipulated penalty for any failure to submit monthly
20 discharge monitoring reports (DMR), for incomplete or late DMRs as required by the Permit, for
21 an exceedance of an Interim Enforcement Limit of 0.20 mg/l monthly average for Total Residual
22 Chlorine during August 1, 2009 through February 28, 2010, or for an exceedance of an Interim
23 Enforcement Effluent Limit for TN or TP.

24 //

1 21. BSB shall be liable for a \$5,000 stipulated penalty for the failure to meet any of
2 the deadlines specified in Paragraphs 7 through 18.

3 22. If any event occurs that may delay completion of corrective actions required in
4 this Consent Order, BSB shall notify the Department in writing within ten (10) days after it
5 becomes aware of the event. The notice must be sent to the address listed in Paragraph 19. The
6 notice of delay must include: (a) an explanation of the reasons for the delay; (b) the expected
7 duration of the delay; and (c) a description of all actions taken or to be taken to prevent or
8 minimize the delay and a schedule for implementation of those actions.

9 23. The Department will review the notice submitted by BSB under Paragraph 22 and
10 will exercise its enforcement discretion to determine if it is appropriate to waive all or a portion
11 of any stipulated penalties.

12 24. Any stipulated penalties due under this Amended Consent Order shall be paid to
13 the Department within thirty (30) days after BSB's receipt of a written demand from the
14 Department. Payment of any stipulated penalties due shall be paid by check or money order,
15 made payable to the "Montana Department of Environmental Quality," and shall be sent to the
16 address listed in Paragraph 19.

17 25. For purposes of Section 75-5-516(2), MCA, regarding Permit fees, BSB is not
18 eligible for for a 25% reduction in annual permit renewal fees during the term of this Amended
19 Consent Order.

20 26. None of the requirements in this Amended Consent Order are intended to relieve
21 BSB from complying with all applicable state, federal, and local statutes, rules, ordinances,
22 orders, and permit conditions, other than the TN and TP effluent limits that are the subject of this
23 Amended Consent Order.

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1 27. BSB waives its right to administrative appeal or judicial review of the Findings of
2 Fact and Conclusions of Law and Amended Consent Order set forth herein and agrees that this
3 Amended Consent Order is the final and binding resolution of the issues raised.

4 28. The terms of this Amended Consent Order constitute the entire agreement
5 between the Department and BSB with respect to the issues addressed herein notwithstanding
6 any other oral or written agreements and understandings made and entered into between the
7 Department and BSB prior to the effective date of this Amended Consent Order. Except as
8 herein provided, no amendment, alteration, or addition to this Amended Consent Order shall be
9 binding unless reduced to writing and signed by both parties.

10 29. Each of the signatories to this Amended Consent Order represents that he or she is
11 authorized to enter into this Amended Consent Order and to bind the parties represented by him
12 or her to the terms of the Amended Consent Order.

13 30. BSB agrees to waive defenses based upon the statute of limitations for the issues
14 addressed herein and not to challenge the Department's right to seek judicial relief in the event
15 that BSB fails to fully and satisfactorily comply with the terms of this Amended Consent Order.

16 31. The Department will terminate this Amended Consent Order in writing upon
17 BSB's demonstration of compliance with the TN and TP effluent limits in any amended or
18 re-issued permit.

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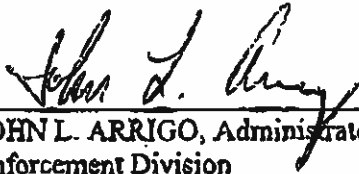
1 32. This Amended Consent Order becomes effective upon signature of the Director of
2 the Department or his designee.

3 IT IS SO ORDERED:

IT IS SO AGREED:

4 STATE OF MONTANA
5 DEPARTMENT OF ENVIRONMENTAL QUALITY

CITY AND COUNTY OF BUTTE -
SILVER BOW

6 
7 JOHN L. ARRIGO, Administrator
Enforcement Division

Signature

8
9 8/28/09
Date

Print Name

Title

Date

See attached signature page
JA 8/28/09

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives, on the day and year first written above

BUTTE-SILVER BOW

Administrator Enforcement

Paul Babb

John L. Arrigo

PAUL BABB
CHIEF EXECUTIVE

John L. Arrigo

ATTEST:



Sally J. Hollis
SALLY J. HOLLIS
CLERK AND RECORDER

APPROVED AS TO FORM:

Eileen Joyce
EILEEN JOYCE
COUNTY ATTORNEY

STATE OF MONTANA)
:SS,
County of Silver Bow)

On this 24th day of Aug, 2009, before me, Sherril Kennedy
a Notary Public for the State of Montana, personally appeared PAUL DAVID BABB and
SALLY J. HOLLIS, known to me to be the Chief Executive and Clerk and Recorder,
respectively, of the City and County of Butte-Silver Bow, a municipal corporation and
political subdivision of the State of Montana, and acknowledged to me that they executed
the written instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year in this certificate first above written

Sherril Kennedy
PRINTED NAME Sherril Kennedy
NOTARY PUBLIC FOR THE STATE OF MONTANA
RESIDING AT Butte
MY COMMISSION EXPIRES Dec. 20, 2010

