



**REGION 8**

DENVER, CO 80202

<p>In the Matter of:</p> <p>Yellowstone County P.O. Box 35024 Billings, Montana 59107</p> <p>Respondent.</p>	<p>Docket No.</p> <p><b>CONSENT AGREEMENT</b></p>
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**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. Complainant and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.
3. This proceeding is subject to the Consolidated Rules of Practice, under which a proceeding may be simultaneously commenced and concluded by a final order from a Regional Judicial Officer or Regional Administrator ratifying a consent agreement. 40 C.F.R. §§ 22.13(b), 22.18(b), 22.4(b).

**II. JURISDICTION**

4. This Agreement is entered into under the authority vested in the Administrator of EPA by section 309(g) of the Clean Water Act (Act), 33 U.S.C. §1319(g). The undersigned EPA official has been duly authorized to institute this action as the Complainant. The state of Montana (Montana) has been provided an opportunity to consult with the EPA regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

### III. DEFINITIONS

5. The term “discharge of a pollutant” is defined to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
6. The term “municipal separate storm sewer” is defined in 40 C.F.R. § 122.26(b)(8). In summary, this term includes a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
  - a. owned or operated by a State . . . or other public body such as a sewer district, flood control district or drainage district, or similar entity . . . that discharges to waters of the United States;
  - b. designed or used for collecting or conveying storm water;
  - c. which is not a combined sewer; and
  - d. which is not part of a Publicly Owned Treatment Works as defined at 40 C.F.R. § 122.2.
7. The term “MS4” is defined as a municipal separate storm sewer system. 40 C.F.R. § 122.26(b)(19).
8. The term “navigable waters” is defined as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
9. The term “person” is defined as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).
10. The term “point source” is defined to include any “discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
11. The term “pollutant” is defined to include “sewage . . . chemical wastes, biological materials . . . rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).
12. The term “storm water” is defined as storm water runoff, snow melt runoff and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13).

#### **IV. GOVERNING LAW**

##### **A. The NPDES Program**

13. The discharge of pollutants into navigable waters is prohibited, except as in compliance with other sections of the Act. 33 U.S.C. § 1311(a).
14. The National Pollutant Discharge Elimination System (NPDES) program allows EPA, and states with EPA authorization, to permit persons to discharge pollutants into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.
15. Montana is a state approved to administer the NPDES program under section 402(b) of the Act, 33 U.S.C. § 1342(b). Montana issues permits in this capacity, which are sometimes known as MPDES permits.
16. EPA retains authority to take enforcement action for violations in Montana under section 309 of the Act, 33 U.S.C. § 1319. 33 U.S.C. §1342(i).

##### **B. The Municipal Separate Storm Sewer Program**

17. Storm water runoff occurs when rain or snowmelt flows over land or impervious surfaces, such as paved streets, parking lots, and building rooftops, and does not soak into the ground. The runoff picks up pollutants such as trash, chemicals, oils, and dirt/sediment.
18. EPA NPDES and Montana MPDES permitting programs regulate storm water discharges from various sources, including municipal separate storm sewer systems (MS4s).
19. EPA and Montana programs, referenced above, are designed to prevent storm water runoff from washing harmful pollutants into local surface waters.
20. Discharges of storm water from MS4s may be authorized by NPDES permits. 33 U.S.C. § 1342(p); 40 C.F.R. §§ 122.26.
21. EPA promulgated regulations applying to storm water discharges by small MS4s pursuant to section 402(p) of the Act, 33 U.S.C. § 1342(p).
22. An operator of a small MS4 is regulated by EPA's storm water program if the small MS4 is in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. 40 C.F.R. § 122.32(a)(1).
23. EPA has listed Respondent, Yellowstone County, as an operator of a small MS4 subject to the requirements of 40 C.F.R. § 122.32-122.36. 64 Fed. Reg. 68722, 68822 (December 8, 1999).

24. Under Montana regulations adopted in 2003, Respondent has been designated as a small MS4 subject to the state's MS4 permitting requirements under the MPDES permitting program. ARM §§ 17.30.1102(23)(a)(i) and 17.30.1105.

## **V. RESPONDENT**

25. Respondent is a "municipality" as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4), and is authorized to do business in Montana.
26. Respondent is a "person" as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).
27. Respondent owns and/or operates an MS4 located in Yellowstone County, Montana.

## **VI. ALLEGED FACTS AND VIOLATIONS OF LAW**

The following findings apply at all times relevant to this matter, unless otherwise stated.

### **A. Yellowstone County's MS4**

28. Respondent owns and operates an MS4, which includes storm water conveyances, storm drain outlets, and storm drain detention ponds.
29. Respondent's MS4 is a "small MS4" as defined by 40 C.F.R. § 122.26(a)(17).
30. Respondent's MS4 discharges pollutants in storm water into the Yellowstone River.
31. The Yellowstone River is a traditional navigable water.
32. The Yellowstone River is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
33. Respondent's MS4 discharges pollutants in storm water into multiple conduits leading to the Yellowstone River.
34. Respondent's MS4 discharges pollutants in storm water into Five Mile Creek.
35. Five Mile Creek is a relatively permanent tributary of the Yellowstone River.
36. Five Mile Creek is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
37. Montana has listed the Yellowstone River as being in need of total maximum daily loads (sometimes referred to as being "impaired" waterbodies) pursuant to section 303(d) of the Act, 33 U.S.C. § 1313(d).

## **B. Yellowstone County's Permit Coverage**

38. On November 30, 2016, and effective January 1, 2017, Montana Department of Environmental Quality (MDEQ) issued MPDES Permit Number MTR040000 (the 2017 MS4 General Permit).
39. On May 16, 2017, Respondent submitted a "Permittee Reapplication Form" for the 2017 MS4 General Permit.
40. On May 23, 2017, MDEQ authorized the Respondent to discharge storm water to state waters under the 2017 MS4 General Permit. MDEQ assigned Respondent authorization number MTR040010.
41. The 2017 MS4 General Permit expired on December 31, 2021.
42. On February 14, 2022, and effective April 1, 2022, MDEQ issued MPDES Permit Number MTR040000 (the 2022 MS4 General Permit).
43. MDEQ issued notifications to the Respondent to apply for coverage under the 2022 MS4 General Permit.
44. On or about February 22, 2023, MDEQ issued a notice of violation to the Respondent for failure to re-apply for the 2022 MS4 General Permit.
45. On March 28, 2023, Respondent provided written notification to MDEQ stating that it did not intend to apply for a discharge permit.
46. On July 20, 2023, EPA issued Respondent a notice of violation and opportunity to confer letter.
47. On November 21, 2023, EPA issued Respondent an Administrative Order for Compliance requiring it to either cease all discharges of stormwater or apply to MDEQ for authorization to discharge.
48. On February 13, 2024, EPA issued Respondent a Notice of Violation for failure to comply with the requirements of the Administrative Order for Compliance to cease all discharges of stormwater or apply to MDEQ for authorization to discharge.
49. On July 10, 2024, Respondent submitted a "Notice of Intent to Comply" application for the 2022 MS4 General Permit.
50. On September 5, 2024, MDEQ authorized Respondent to discharge storm water to state waters under the 2022 MS4 General Permit. MDEQ assigned the Respondent authorization number MTR040054.

51. Between December 31, 2021, and September 5, 2024, Respondent did not have a MDEQ or EPA MS4 General Permit authorizing discharges of storm water from its MS4.
52. On October 12, 2023, MDEQ conducted a wet weather inspection of several areas of Respondent's MS4, including the Billings Heights, Lockwood and the Black Rock Estates Subdivisions.
53. On October 12, 2023, Respondent's MS4 discharged pollutants in storm water into navigable waters without a permit, in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

## **VII. TERMS OF CONSENT AGREEMENT**

54. For this proceeding, Respondent:
  - a. admits the jurisdictional allegations in section II of this Agreement;
  - b. neither admits nor denies the factual allegations stated in section VI of this Agreement;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - e. waives any right to contest the alleged violations of law set forth in section VI of this Agreement;
  - f. acknowledges that EPA has provided an opportunity for a hearing and waives any right to a hearing in this proceeding;
  - g. waives any right to appeal the Final Order accompanying this Agreement; and
  - h. waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying this Agreement.

## **VIII. CIVIL PENALTY.**

55. EPA is authorized to impose Class I administrative penalties of up to \$27,378 per violation, up to a total of \$68,445, for violations occurring after November 2, 2015,

where penalties are assessed on or after January 8, 2025. 33 U.S.C. § 1319(g)(2)(A); 40 C.F.R. part 19; and 90 Fed. Reg. 1375, 1377 (January 8, 2025).

56. To determine the amount of the civil penalty, EPA considered the nature, circumstances, extent, and gravity of the violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require, in accordance with section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).
57. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 56 above, EPA has determined a civil penalty of **\$22,400** (Penalty) is appropriate to settle this matter.
58. Respondent agrees to pay the Penalty of **\$22,400** within 30 calendar days after the Effective Date.
59. Respondent must pay the Penalty and any interest, fees, or other charges due using any method, or combination of appropriate method, as provided on the website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
60. When making a payment, Respondent must:
  - a. identify each and every payment with Respondent's name and the docket number that appears on the Final Order; and
  - b. Respondent must send proof of payment to the Regional Hearing Clerk at [r8\\_hearing\\_clerk@epa.gov](mailto:r8_hearing_clerk@epa.gov), and Lisa-Kay Prideaux at [prideaux.lisakay@epa.gov](mailto:prideaux.lisakay@epa.gov), and EPA Cincinnati Finance Center at [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov) within 24 hours of payment of EPA Penalty.

“Proof of payment” means, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number and Respondent's name.
61. **Interest, Charges, and Penalties on Late Payments.** Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Penalty, the following amounts:
  - a. **Interest.** Interest begins to accrue from the Effective Date. If the Penalty is paid in full within 30 days, interest accrued is waived. If the Penalty is not

paid in full within 30 days, interest will continue to accrue until any unpaid portion of the Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the Internal Revenue Service (IRS) standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

- b. **Handling Charges.** Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first 30-day period after the Effective Date. Additional handling charges will be assessed every 30 days, or any portion thereof, until the unpaid portion of the Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. **Late Payment Penalty.** A late payment penalty of six percent per annum, will be assessed monthly on all debts, including any unpaid portion of the Penalty, interest, penalties, and other charges, that remain delinquent more than 90 days. Any such amounts will accrue from the Effective Date.

62. **Late Penalty Actions.** In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a collection agency or a credit reporting agency, pursuant to 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the IRS for offset against income tax refunds, pursuant to 40 C.F.R. part 13, subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, pursuant to 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, pursuant to 40 C.F.R. § 13.33.

63. **Allocation of Payments.** A partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued

interest, and last to the principal that is the outstanding Penalty amount. 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d),

64. Upon incorporation into a final order this Consent Agreement applies to and is binding upon the parties, and Respondent's officers, directors, members, employees, agents, successors and assigns. Any change in ownership or business organization of Respondent, including but not limited to any transfer of assets or real or personal property will not alter Respondent's responsibilities under this Consent Agreement.

### **IX. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER**

65. Completion of the terms of this Agreement resolves only Respondent's liability under 33 U.S.C. § 1319(g) for federal civil penalties for the violations alleged above. 40 C.F.R. § 22.18(c).
66. By signing this Agreement, Respondent acknowledges this Agreement will be available to the public and agrees this Agreement does not contain any confidential business information or personally identifiable information.
67. The undersigned representatives of Respondent certify they are fully authorized to execute and enter into the terms and conditions of this Agreement and have the legal capacity to bind the party they represent to this Agreement.
68. The parties agree this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement and any signature page with digital certificates for signatures may be transmitted electronically (e.g., a PDF file).
69. By signing this Agreement, both parties agree each party's obligations under this Agreement constitute sufficient consideration for the other party's obligations.
70. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
71. Each party bears its own attorneys' fees, costs, and disbursements incurred in this proceeding.

72. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
73. EPA reserves its legal and equitable rights if EPA finds that any information provided by Respondent was materially false or inaccurate at the time the information was provided to EPA.
74. This Agreement does not relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, tribal, or local laws, restrict EPA's authority to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, tribal, or local permit.
75. This Agreement does not limit EPA's power to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
76. Each party consents to service of the Final Order approving this Consent Agreement by e-mail at the following valid e-mail addresses: [jackson.laurianne@epa.gov](mailto:jackson.laurianne@epa.gov) (for Complainant), and [swilliams@yellowstonecountymt.gov](mailto:swilliams@yellowstonecountymt.gov) (for Respondent).

## **X. PUBLIC NOTICE**

77. As required by 40 C.F.R. § 22.45, prior to submitting this Agreement to the Regional Judicial Officer or Regional Administrator for approval, EPA will provide public notice of this Agreement and 30 days to comment on the matter. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate, or if a hearing is requested under 42 U.S.C. § 300h-2(c)(3)(C); but may not alter the terms of this Agreement without the written approval of Respondent.

## **XI. EFFECTIVE DATE**

78. This Agreement and subsequently issued Final Order becomes effective on the date indicated in the Final Order.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8**

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Colleen Rathbone, Manager  
Water Enforcement Branch  
Enforcement and Compliance Assurance Division

Complainant, for the United States Environmental Protection Agency.

**YELLOWSTONE COUNTY**

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Mark Morse, Chair  
Board of County Commissioners

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Michael J. Waters, Member  
Board of County Commissioners

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Chris White, Member  
Board of County Commissioners

Respondent.