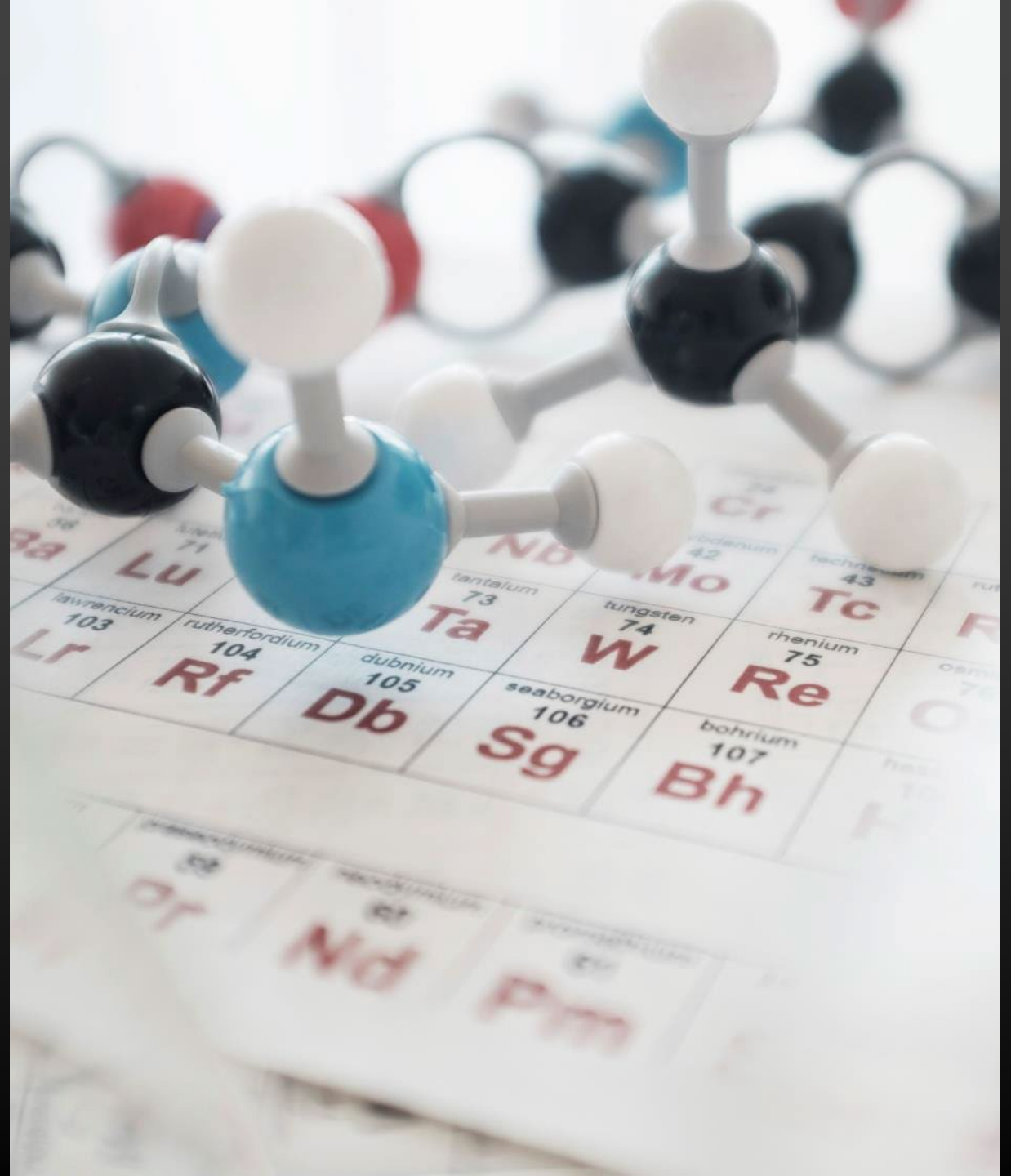




# Enforcement Applied

Leah Hall

[Leah.Hall@rcgov.org](mailto:Leah.Hall@rcgov.org)



# About Me

## Leah Hall

- B.S. Biology, B.S. Chemistry
  - BHSU 2009
- Medical Laboratory Technician
  - 4 years experience
- Environmental Process Supervisor
  - 10 years experience from Lab to EPS
- WEF Water Leadership Institute (WLI) 2021 Cohort and scholarship recipient





# City of Rapid City Water Reclamation Division

- 9 MGD plant
- ~80,000 citizens served
- ~600 FOG program participants
- 9 industrial users
  
- ERP Edition 2016





# Enforcement Response Plan

## 2016 Revision

- Section II Violations Requiring Enforcement Actions
  - Noncompliance with Reporting Requirements
  - Noncompliance with Discharge Limits
  - Significant Noncompliance
  - Failure to Properly Operate or Maintain Pretreatment Equipment
  - Violation of Prohibited Discharge
  - Slug Discharges or Spills
  - Denial of Access for Inspection or Sampling
  - Failure to Comply with NOV
  - Failure to Comply with Administrative Order



# Enforcement Response Plant Cont.

## Enforcement Actions

- Informal Contacts
  - Verbal notice
  - 1 week compliance requirement
  - A record of contact is kept in their file
- Used for:
  - Items missing from a report
  - Analyses not occurring at proper frequencies
  - Analyses not performed by EPA methods
  - Proper sampling procedures not followed
- Notice of Violation
  - Escalation from Informal Contact
    - 2 week compliance requirement
  - Discharge Noncompliance
    - 30 day compliance requirement
    - Number of samples required depends on the number of excursions
    - Resampling results must be called in within 24 hours and written results received within 5 days



# Administrative Order

## Administrative Order

- Escalation from Notice of Violation
- Lists all violations to date
- Requirements
  - Immediate action to comply
  - Within 5 days: Provide intent to comply
  - Within 7 days: Reports
    - Inspection of Pretreatment Equipment
    - Sampling Procedures Manual
    - SOPs for Pretreatment Equipment Cleaning
  - Within 14 days: Report on adequacy of Pretreatment equipment to meet all requirements
- Provided the reports are adequate:
  - Increased sampling and reporting to last the duration of the AO
- If the report is inadequate
  - Required installation of appropriate equipment within 45 days
  - Increased sampling and reporting to last the duration of the AO
- ...and if they don't...



# Demand Order

## End of the Line

- Assessment of Monetary Penalties
- Termination of Service
- Legal Remedies

## Show Cause Hearing

- Allows the User due process under the law
- Allows the User to explain its noncompliance and to show cause why the City should not proceed with Penalties or reduce the proposed Penalties



# Monetary Penalties

State of SD Law limits the maximum fine that the City may Levy at \$1000 per violation per day.

VIOLATION	MINIMUM FINE Per violation per day
Late submittal of Self Monitoring Reports	\$100
Failure to Report Noncompliance	\$250
Failure to Self Monitor	\$250
Violation of Discharge Limits	\$500
Failure to Comply with Administrative Order	\$750
Failure to Notify of Slug or Spill	\$500
Failure to Notify of Changes in Operations or Wastewater Characteristics	\$100







So let's delve into a scary story...



- First copy was sent prior to publishing
- Second copy was sent, signed, and returned
- Third copy was sent electronically when the Permit became active
- Fourth copy (hard copy) was sent with notification on the cover of specifically sections to pay attention to



Yay Reports!

Wait... Where's the...  
BOD and TSS results?

Ok, breathe... it was  
just forgotten...

... sigh it wasn't just  
forgotten (unless you  
mean the whole permit  
revision/ sampling  
changes)

Ugh!







# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

## Public Works Department Water Reclamation Division

Environmental Process Group  
7903 Southside Drive  
Rapid City, SD, 57703

April 3, 2019

[Redacted]

### RE: Notice of Violation to Industrial Waste Permit

Mr. [Redacted],

Please be informed that the [Redacted] is in Significant Noncompliance of Industrial Waste Permit Number 52. The City of Rapid City notified the [Redacted] of the violation on March 11, 2019.

Sample Date	Parameter	Sampling Frequency	Sampler	Daily Maximum Limit (mg/L)	Daily Maximum TRC Limit (mg/L)
February 2019	BOD	Twice Monthly per Outfall	Self	None	None
	TSS	Twice Monthly per Outfall	Self	None	None

[Redacted] is required by permit to sample BOD and TSS from the Neutralization Basin outfall twice monthly, and the Sedimentation Basin outfall twice monthly. The sampling that occurred in February 2019 included four samples for BOD and TSS from the Sedimentation Basin, and one sample for BOD and TSS from the Neutralization Basin.

Unfortunately compliance cannot be restored for a sampling schedule that has been missed. However, in order to demonstrate [Redacted] dedication to ongoing permit compliance for the parameters listed above [Redacted] shall collect one sample from the Neutralization Basin within 30 calendar days of the issuance of this Notice of Violation, April 3, 2019. This sample is in addition to the normal sampling schedule

Please notify me of test results by phone or email within 24 hours of your receipt of the laboratory reports, and in writing within 5 days of the receipt of the lab reports.

To avoid monthly noncompliance, BOD and TSS must be sampled twice monthly for each outfall (Sedimentation and Neutralization) per the terms of the Industrial Waste Discharge Permit No. 52.

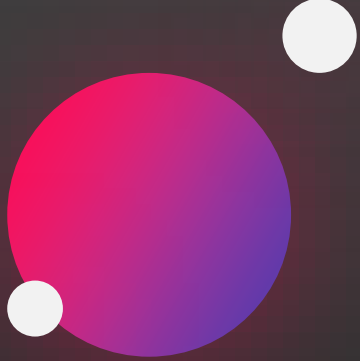
By Federal law, the City is required to publish public notice of Industrial Users that have exceeded their permitted limits in the past year. I expect the 2019 publication to occur in late January, 2020. This procedure does not constitute a punitive action, it is simply for public information.

The [Redacted] will not be assessed any penalties due to this permit violation.

If you have any questions, or need additional information, please contact my office at 394-4174. In my absence, please report violations to Bob Druckrey (Environmental Process Supervisor), or Dave VanCleave (WRF Superintendent).

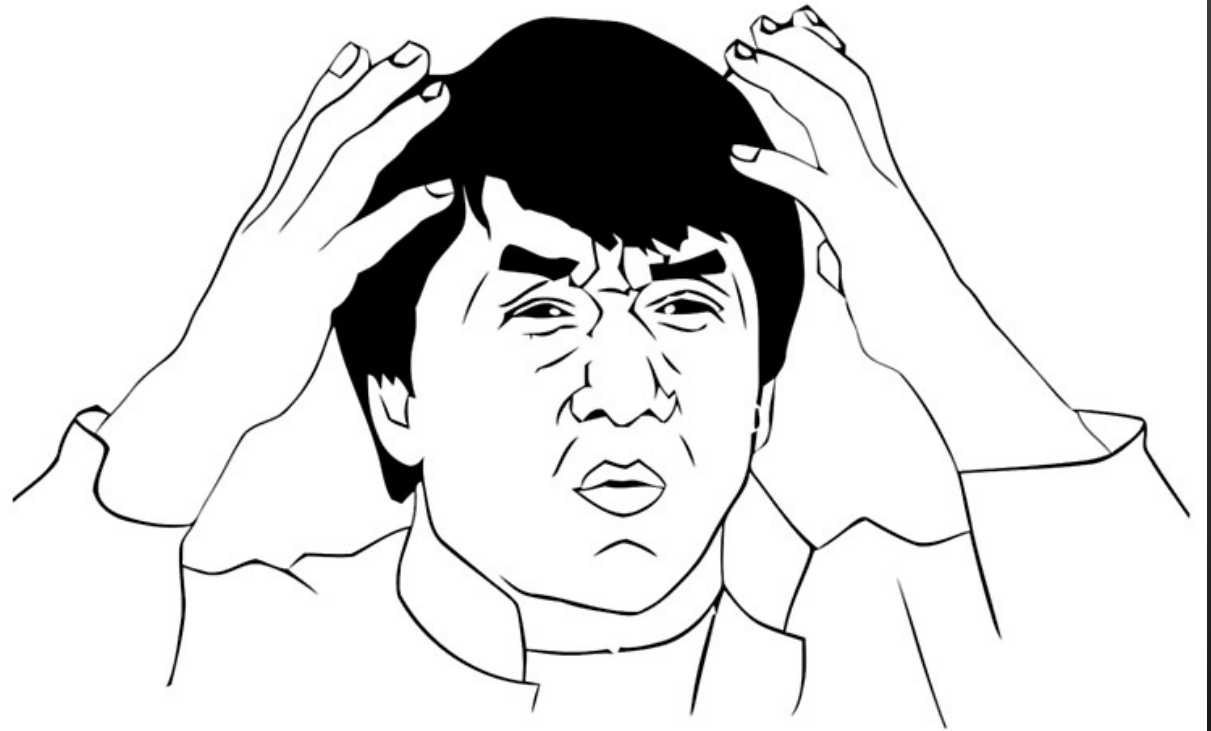
best regards,

Leah Hall  
Environmental Process Specialist



“I do believe something very magical  
can happen when you read...”

- JK Rowling



Administrative Orders from my desk are usually 10 or more pages.

They come equipped with verbiage stating that nothing in this order shall preclude the requirements of the current Permit...

**II. FINDINGS OF FACT**

- A. On April 4, 1983, EPA approved Rapid City's Industrial Pretreatment Program thereby delegating the City the responsibility of implementing and enforcing National Pretreatment Standards. Section III.I of the Rapid City Surface Water Discharge (SWD) Permit contains the requirement for the City's implementation of an acceptable program.
- B. [REDACTED], a [REDACTED] [REDACTED], located at [REDACTED] [REDACTED], (hereinafter, "Permittee") was issued a permit that became effective 01/23/2019, and will continue in effect until 12/31/2023. The Permit authorizes the discharge of industrial wastewater to the Rapid City Water Reclamation System.
- C. The Permit requires the Permittee to perform self monitoring and to sample and analyze its wastewater, under the following schedules, for the following pollutants:

PERMIT TABLE 2			
Monthly Sampling and Reporting Requirements, Sample Point 1 (Sedimentation Basin Discharge)			
Parameter	Limits	Sample Type	Frequency
BOD, mg/l	No limit	Composite <sup>1</sup>	Twice/calendar month
TSS, mg/l	No limit	Composite	Twice/calendar month
pH, SU	≥ 5.00 SU <sup>3</sup>	Grab <sup>2</sup>	Once/calendar month
Flow, Point 1, gal/d	NA		Daily <sup>2</sup>
Flow, Point 2, gal/d	NA		Daily
Finished Water Production, gal/d	NA		Daily

PERMIT TABLE 3			
Monthly Sampling and Reporting Requirements, Sample Point 2 (CIP Neutralization Basin Discharge)			
Parameter	Limits	Sample Type	Frequency
BOD, mg/l	No limit	Composite <sup>1</sup>	Twice/calendar month
TSS, mg/l	No limit	Composite	Twice/calendar month
pH, SU	≥ 5.00 SU <sup>3</sup>	Grab <sup>2</sup>	Once/calendar month

PERMIT TABLE 4			
Semiannual Toxic Pollutant Sampling and Reporting Requirements, Sample Points 1 and 2			
Total Pollutant	Discharge Limits Daily Maximum (mg/L)	Sample Type	Sample Frequency
Arsenic (As)	0.047	Composite <sup>1</sup>	Once/6 months
Cadmium (Cd)	0.0310	Composite	Once/6 months
Chromium (Cr), Total	0.487	Composite	Once/6 months
Chromium, Hexavalent	0.064	Grab <sup>2</sup>	Once/6 months
Copper (Cu)	0.718	Composite	Once/6 months
Lead (Pb)	0.348	Composite	Once/6 months
Mercury (Hg)	0.0002	Composite	Once/6 months
Nickel (Ni)	0.510	Composite	Once/6 months
Selenium (Se)	0.092	Composite	Once/6 months
Silver (Ag)	1.2680	Composite	Once/6 months
Zinc (Zn)	5.307	Composite	Once/6 months

- D. The City of Rapid City Public Works Administration Water Reclamation Division (hereinafter, "Division"), on 06/04/2019, prepared an Administrative Order to identify Permit deficiencies. The Division used Permit requirements and the City of Rapid City Code of Ordinances as a guidance to determine the significance of Permit Violations.

**III. FINDINGS OF VIOLATION**

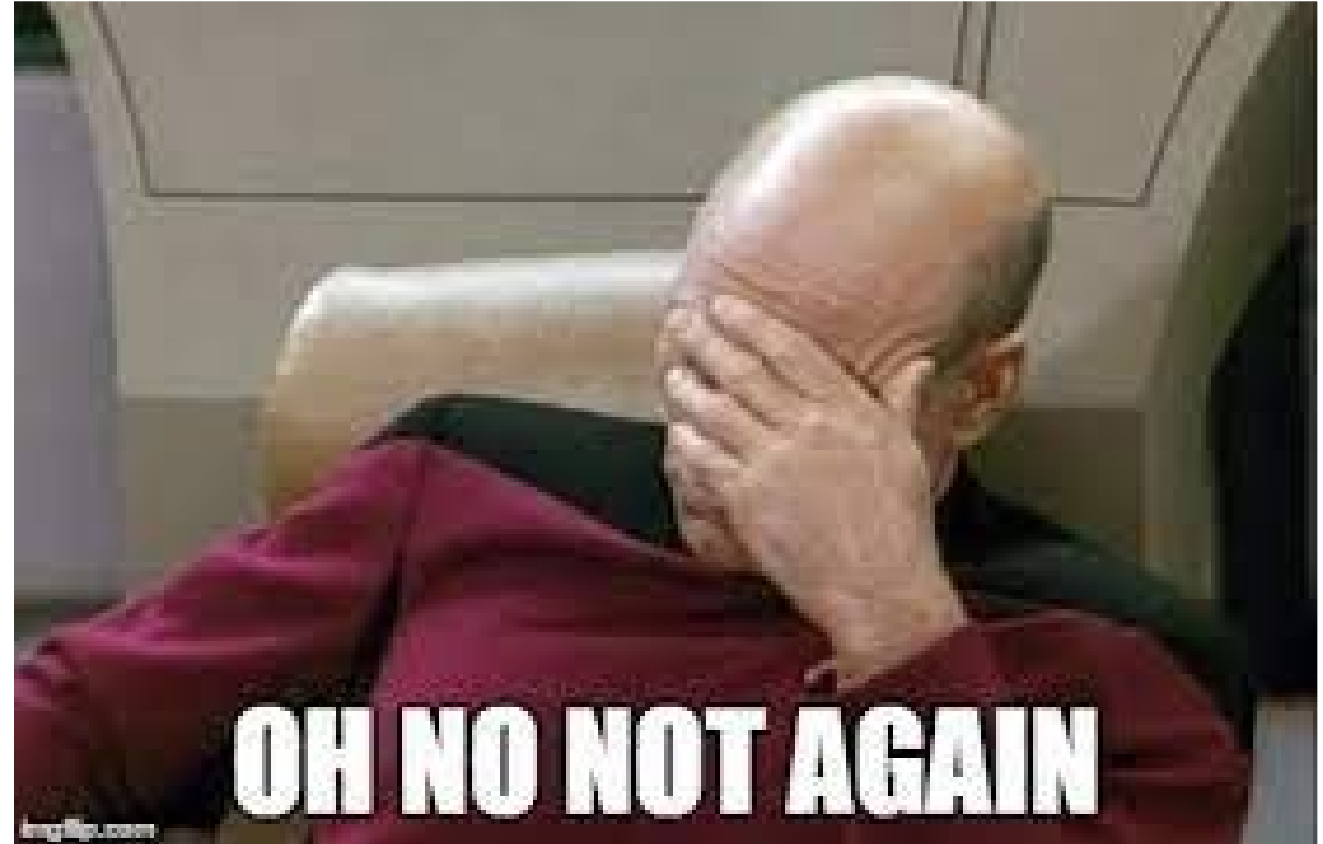
Using the following criteria, the City has determined the [REDACTED] to be in violation of its Permit for the following reasons:

- A. [REDACTED] failed to collect the required number of samples from the Neutralization Basin for the month of February, 2019. [REDACTED] is required by permit to sample BOD and TSS from the Neutralization Basin outfall twice monthly, and the Sedimentation Basin outfall twice monthly. The sampling that occurred in February 2019 included four samples for BOD and TSS from

Arsenic was nearly 55 times the limit

Mercury was more than 10 times the limit

Additionally these results scooted in a ridiculous three weeks later than they should have been reported.







They didn't want to sample, then the excursions so we wanted them to sample... So they sampled.

For five weeks they sampled weekly.

They called the results in and remitted a hard copy within 5 days.



PERMIT TABLE 4			
Semiannual Toxic Pollutant Sampling and Reporting Requirements, Sample Points 1 and 2			
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Mercury (Hg)	0.0002	Composite	Once/6 months
Nickel (Ni)	0.510	Composite	Once/6 months
Selenium (Se)	0.092	Composite	Once/6 months
Silver (Ag)	1.2660	Composite	Once/6 months
Zinc (Zn)	5.307	Composite	Once/6 months

This sampling schedule had changed from the previously permitted sampling schedule.

Previously testing Sampling Site 1 was required weekly for BOD and TSS, and testing Sampling Site 2 was required monthly. Requests had been made by the Permittee to change this to the twice/month schedule to simplify sampling, and to allow for averaging of potential outlier values.

4. The City of Rapid City Public Works Administration Water Reclamation Facility (hereinafter, "Water Reclamation Facility") on AUG 27, 2019, conducted an evaluation to identify Permit deficiencies. The Water Reclamation Facility used Permit requirements and the City of Rapid City Code of Ordinances as a guidance to determine the significance of Permit Violations.

### III. FINDINGS OF VIOLATION

Using the following criteria, the City has determined [REDACTED] to be in violation of its Permit for the following reasons:

1. On MAR 08, 2019 the February 2019 report was received from the Permittee. Sampling did not occur according to the Permit requirements.
  - a. The Permittee is required by the Permit to sample BOD and TSS from Sampling Site 1 and Sampling Site 2 twice monthly.
    - i. The sampling that occurred was four samples from Sampling Site 1 and one sample from Sampling Site 2.
  - b. As required by the City of Rapid City's Enforcement Response Plan this sampling error constitutes noncompliance of discharge limits (ERP Page 6, 7).
2. On APR 03, 2019 a Notice of Violation was prepared and sent outlining the violation and steps to remediate the error. Remediation sampling was required in the form of one sample from Sampling Site 2 for BOD and TSS by MAY 03, 2019.
 

Excerpt from APR 03 NOV

*"Unfortunately, compliance cannot be restored for a sampling schedule that has been missed. However, in order to demonstrate [REDACTED] dedication to ongoing permit compliance for the parameters listed above, [REDACTED] shall collect one sample from the Neutralization Basin within 30 calendar days of the issuance of this Notice of Violation, April 3, 2019. This sample is in addition to the normal sampling schedule. Please notify me of test results by phone or email within 24 hours of your receipt of the laboratory reports, and in writing within 5 days of the receipt of the lab reports."*
3. On MAY 06, 2019 the April monthly report was received from the Permittee. The report did not include results for the remedial sample. On MAY 07, 2019 a call was placed to confirm the collection of remediation samples. The sample had not been collected.
  - a. The Enforcement Response Plan (ERP) requires that a failure to complete requirements of a Notice of Violation will result in, at a minimum, the issuance of an Administrative Order (ERP Page 10 Section 8).

4. On JUN 04, 2019 an Administrative Order (Docket 2019-01 PN 52) was prepared and sent outlining the violations and steps to remediate the errors. The Administrative Order stipulated that the Permittee shall immediately take all necessary actions to completely and properly implement all reporting procedures to comply with all requirements of its most recent Permit, including the additional sampling of the Sampling Site 2 as required in the Notice of Violation. The Administrative Order also required an intent to comply statement to be sent to the Superintendent within five (5) calendar days.
  - a. An intent to comply was received by the Superintendent on JUN 06, 2019.
  - b. Remedial samples were collected AUG 13, 2019.
    - i. The sample results were reported verbally within 24 hours and in writing within 5 days.
  - c. The Administrative Order stipulated that nothing in the Order shall be construed to preclude the institution of any legal action against the Permittee, nor does this Order relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal State, and/or Local laws or regulations
5. On AUG 08, 2019 the July monthly report was received. Within the results were violating values for Arsenic and Mercury.
  - a. The reported value for Arsenic was 2.57, where the permitted limit is 0.047.
  - b. The reported value for Mercury was 0.0024, where the permitted limit is 0.0002.
  - c. According to the Permit Page 6 section E, and 40 CFR 403.12 (g)(2) Noncompliance notification shall be completed by telephone within 24 hours, and followed by written notice within 5 days.
    - i. Lab results were sent by the testing laboratory to the Permittee JUL 16, 2019 at 11:22.

1. The 24-hour verbal notice timeline for the Permittee to notify Pretreatment Staff expired JUL 17, 2019, and the 5-day written notice timeline expired JUL 21, 2019. Neither deadline was met.
  - d. The Enforcement Response Plan states that a failure to comply with an Administrative Order will result in further enforcement actions which may include, but are not necessarily limited to, the assessment of monetary penalties, termination of service, and/or legal remedies (ERP Page 10 Section 9).
  - e. The Administrative Order stipulated that the Order will terminate on December 31, 2019, and that failure to comply with all reporting requirements will result in additional enforcement actions against [REDACTED].
  - f. The Administrative Order also stipulated that nothing in the Order will be construed to preclude the institution of any legal action against [REDACTED] [REDACTED], nor does this Order relieve [REDACTED] [REDACTED] from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal, State, and/or Local laws or regulations.
6. On AUG 14, 2019 the Environmental Process Group met with [REDACTED] [REDACTED] and the Assistant Public Works Director to discuss remediation of continued violations.
    - a. Weekly sampling for metals for both outfalls was requested by Pretreatment Staff.
    - b. [REDACTED] suggested a failed cleaning schedule as the source of the excursions for Arsenic and Mercury. Cleaning efforts were noted as being increased to correct the situation.
  7. Weekly samples were collected on AUG 20, 2019, AUG 27, 2019, SEPT 03, 2019, SEP 10, 2019, and SEP 17, 2019.
    - a. All samples were verbally reported within 24 hours of receipt of results, and reported in writing within 5 days of receipt.

8. On SEP 24, 2019 a letter was drafted and sent to allow the Permittee to return to a normal sampling schedule.

a. Increased sampling suggests that the cause of the violations had been resolved.

#### IV. ORDER

Based on the foregoing findings, and pursuant to the provisions of 40 CFR 403.8 (f)(1)(vi)(A) of the General Pretreatment Regulations for Existing and New Sources of Pollution, IT IS HEREBY ORDERED that:

1. [REDACTED] shall remit to the City of Rapid City, Finance Office, on or before DEADLINE DATE, a penalty of \$ 22,950 for the violations listed in the Findings of Violation of this order.
  - a. Penalties listed in the below table outlined in the Enforcement Response Plan.

Jackson Springs Water Treatment Plant Penalty Assessment Summary					
Assessment Item	Minimum Amount, \$ Per Violation Per Day	NC Begin Date	NC End Date	Duration, Days	Total
Failure to Report Noncompliance <sup>1</sup>	250	7/18/2019	8/8/2019	22	5,500
Violation of Discharge Limits <sup>2</sup>	500	7/9/2019	7/9/2019	1	500
Failure to Comply with AO <sup>3</sup>	750	7/18/2019	8/8/2019	22	16,500
Administrative Costs					450
<b>TOTAL</b>					<b>22,950</b>

Notes:  
1) Lab emailed results to JSWP 07/16/19 @ 1122 MT; verbal report due 07/17/2019. Report rec'd @ WRF 08/08/2019  
2) Significant exceedences on Arsenic and Mercury 07/09/2019  
3) Failure to report Arsenic & Mercury exceedences as required by permit violated terms of AO

2. If [REDACTED] contests the above penalties, they may appear at a meeting with City Representatives to be held on DAY, DATE, at TIME MST, in the LOCATION

3. At this meeting, [REDACTED] must demonstrate why the City should not assess these penalties or pursue additional enforcement actions against [REDACTED] at this time.

4. This meeting will be closed to the public.

5. Representatives of [REDACTED] may be accompanied by legal counsel if they so choose.

6. Failure to comply with this order shall also constitute a further violation of the City of Rapid City Municipal Sewer Use Ordinances Section 13.08 and may subject [REDACTED] to civil or criminal penalties or such other enforcement responses as may be appropriate.

7. This order shall be effective upon receipt by [REDACTED]

8. Nothing in this Order shall be construed to preclude the institution of additional legal actions against [REDACTED] nor does this Order relieve [REDACTED] from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal, State, and/or Local laws or regulations.

9. Additional Notes: *It is the sole responsibility of the Executive Officer of any entity issued an Industrial Waste Discharge Permit to fully understand the requirements of the Permit, and the terms of all Administrative Orders or other documents associated with it.*



# Thank You

Leah Hall

✉ [Leah.hall@rcgov.org](mailto:Leah.hall@rcgov.org)