



September 26, 2023

The Honorable Nancy McKinney  
Town of Darby  
PO Box 37  
Darby, MT 59829

**RE: Executed Consent Order, Docket No. WQ-23-04 (FID 2863)**

Dear Mayor McKinney:

Enclosed, please find a copy of the executed Consent Order for the Town of Darby. The effective date of the order is September 25, 2023.

The Plan and Schedule (Plan), as described in item A of the Consent Order, is due no later than **November 24, 2023**.

If you have any questions, feel free to contact me at the email address or phone number provided below.

Sincerely,

A handwritten signature in black ink, appearing to read "M. J. Thomas", is written over a light blue horizontal line.

Margarite Juarez Thomas  
Environmental Enforcement Specialist  
Enforcement Program  
(406) 755-8956  
email: [mjuarezthomas@mt.gov](mailto:mjuarezthomas@mt.gov)

Enclosures

cc via email: Kirsten Bowers, DEQ Legal Unit  
Chris Romankiewicz, DEQ CTTA  
Lenny Beiler, Town of Darby  
Jason Crawford, Triple Tree Engineering

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

IN THE MATTER OF:

VIOLATIONS OF THE MONTANA WATER  
QUALITY ACT BY THE TOWN OF DARBY AT  
THE TOWN OF DARBY WASTEWATER  
TREATMENT FACILITY, MPDES PERMIT NO.  
MTG580011 (FID 2863)

NOTICE OF VIOLATION  
AND  
CONSENT ORDER

Docket No. WQ-23-04

*Notice of Violation*

Pursuant to the authority of Section 75-5-611, Montana Code Annotate (MCA), the Montana Department of Environmental Quality (DEQ) hereby gives notice to the Town of Darby (“Darby”) of the following Findings of Fact and Conclusions of Law with respect to violations of the Montana Water Quality Act (WQA) (Title 75, chapter 5, part 6, MCA), and the Administrative Rules of Montana (ARM) adopted thereunder at the Darby Wastewater Treatment Facility (WWTF).

*Findings of Fact and Conclusions of Law*

Darby owns and operates the Darby WWTF, a three-celled lagoon system, equipped with solar bee mixers in each cell. The lagoons were constructed in the 1960s and upgraded to the current three-cell lagoon system in 1979. The WWTF is located northeast of Darby and is operated as a batch-discharging facility with authorization number MTG580011 issued under the General Permit for Domestic Sewage Treatment Lagoons – Batch and Non-Discharging Facilities, MPDES Permit No. MTG580000 (General Permit). Discharge pursuant to authorization number MTG580011 is intermittent to the Bitterroot River.

It is unlawful to violate any provision set forth in a permit or stipulation, including limitations and conditions contained in the General Permit. Darby violated the Montana Water Quality Act, §75-5-605(1)(b), MCA, and Administrative Rule of Montana (ARM) 17.30.1342(1) by failing to comply with the conditions and limitations in Part II.A of the General Permit.

Darby has reported 28 effluent limit exceedances from June 2020 to present, as listed below and in Attachment A, which lists the effluent limit violations that are the subject of this Consent Order. Twenty-one of the 28 exceedances are considered significant noncompliance (SNC) with the remainder being reportable noncompliance.

1. Carbonaceous Biological Oxygen Demand 5-day (CBOD<sub>5</sub>): Darby exceeded the Permit effluent limits for CBOD<sub>5</sub> a total of sixteen times, fourteen of which were in SNC. The CBOD<sub>5</sub> exceedances included:
  - monthly average in loading pounds per day (four times);
  - monthly average concentration in mg/L (four times);
  - weekly maximum concentration in mg/L (four times);
  - weekly maximum loading in pounds per day (two times); and
  - percent removal (two times).

2. pH: Darby exceeded the Permit effluent limit for pH four times.
3. *E. coli*: Darby exceeded the Permit effluent limits for *E. coli* a total of five times, all of which were in SNC.
4. Total Suspended Solids (TSS): Darby exceeded the Permit effluent limit for TSS one time.

DEQ issued violation letters for each of the Permit effluent exceedances described above.

### ***Corrective Actions***

To address the violations described above, DEQ and Darby agree that Darby shall complete the following corrective actions:

- A. No later than 60 days from the effective date of this Consent Order**, Darby shall submit a compliance plan and schedule (Plan) that outlines the steps Darby will take to return to compliance with the Permit. The Plan should include:
  - a. An engineering report which includes details on implementation of optimization and/or necessary upgrades;
  - b. Deadlines for completion of each task, including dates for:
    - i. Submittal of any necessary design reports, plans and specifications to complete the corrective action to DEQ's Engineering Bureau;
    - ii. Completion of any construction or modification of the WWTF and collection system;
    - iii. Submittal of as-built drawings and project certification for any construction or modification to the WWTF and collection system; and
    - iv. Maintain compliance with the Permit at the WWTF for two years following the completion of the upgrades listed in the compliance plan.

The Plan shall be submitted in writing via email to Margarite Thomas, [MjuarezThomas@mt.gov](mailto:MjuarezThomas@mt.gov).

DEQ will review the Plan and provide a written response to Darby that either approves the Plan or identifies deficiencies in the Plan that must be corrected. Darby must promptly correct any identified deficiency and resubmit the Plan as above. The approved Plan and timeline for completion will be incorporated by reference into this Consent Order.

- B.** By January 31 of each year following the effective date of this Consent Order, Darby shall submit an annual status report to DEQ, at the address listed on the following page.
- C.** No deadline required by this Consent Order may be extended unless Darby requests an extension in writing before the deadline passes and DEQ determines that Darby has

shown good cause for a reasonable extension of the deadline. Extension requests shall be submitted in writing via email to [MjuarezThomas@mt.gov](mailto:MjuarezThomas@mt.gov) and must:

- a. Notify DEQ of any anticipated delay within 10 business days after Darby becomes aware of the reason for the delay;
- b. Demonstrate that the reason for and the length of the anticipated delay are beyond Darby's control;
- c. Demonstrate that Darby has made all reasonable efforts to avoid the anticipated delay; and,
- d. Propose a reasonable new deadline.

DEQ may approve or disapprove a request for extension, in whole or in part, and will notify Darby of its decision in writing. Modification of an individual deadline will not affect any other deadline under this Consent Order unless expressly authorized in writing by DEQ.

### ***Penalties***

Based on the number of violations that were in SNC, DEQ has calculated an administrative penalty in the amount of \$40,250, as shown on the enclosed penalty calculation worksheet. **To facilitate compliance and resolve this case, DEQ is using its discretion as allowed by ARM 17.4.308 and is choosing not to assess an administrative penalty for these violations.** In lieu of assessment of an administrative penalty, Darby agrees to pay the following stipulated penalties:

- \$350 for each day the Plan described in A. above is late unless DEQ approves the delay in accordance with C. above.
- \$500 for each day any deadline in the Plan is delayed without prior notification to DEQ and receipt of written approval of the delay in accordance with C. above.

Within 30 days after receipt of written notice, Darby must pay to DEQ the full amount of any stipulated penalty that is due.

To pay by credit card, debit card, or electronic check, contact the Enforcement Program at 406.444.0379. To pay by check or money order, make payable to the Montana Department of Environmental Quality and send to:

Margarite Thomas  
Environmental Enforcement Specialist  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

**Reservation of Rights and Waiver**

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

This Consent Order is the entire agreement between DEQ and Darby.

No amendment, alteration, or addition to this Consent Order will be binding unless reduced to writing and signed by both parties.

Darby waives its right to administrative appeal or judicial review of this Consent Order and agrees that this Consent Order is the final and binding resolution of the issues raised.

Any failure by Darby to fulfill the requirements of this Consent Order is a violation of the WQA, §75-5-101, MCA *et seq.*, and may result in DEQ seeking additional corrective action including enforcement action and penalties.

Darby waives defenses based on the statute of limitations for the violations described in this Consent Order and may not challenge DEQ’s right to seek further administrative enforcement action or judicial relief if Darby fails to promptly pay stipulated penalties or otherwise comply fully with the terms of this Consent Order.

None of the requirements in this Consent Order relieve Darby from its obligation to comply with all applicable statutes, rules, orders, or permits.

Each party will bear its own costs incurred in this action, including attorney fees.

This Consent Order becomes effective upon signature of DEQ and closes upon written notification from DEQ.

IT IS SO ORDERED:

STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY

Chad W Anderson  
CHAD W. ANDERSON  
Enforcement Program Manager

26 Sep 2023  
Date

IT IS SO AGREED:

TOWN OF DARBY

Nancy G McKinney  
Signature

Nancy G. McKinney  
Print Name

Mayor  
Title

9-22-2023  
Date

**Department of Environmental Quality - Enforcement Program  
Penalty Calculation Worksheet**

Responsible Party Name:	Town of Darby (Darby)
FID:	2863
Statute:	Water Quality Act
Maximum Daily Penalty per Violation:	\$10,000.00
Date:	7/10/2023
Name of Employee Calculating Penalty:	Margarite Juarez Thomas

Penalty Calculation #1
Description of Violation: Since 2020, Darby has exceeded its permitted effluent limits 28 times, in violation of Section 75-5-605(1)(b), Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM) 17.30.1342(1).

**I. BASE PENALTY**

**Nature**

Explanation: Permit effluent limits are established to protect beneficial uses of state waters. An exceedance of a permit limit has the potential to harm human health or the environment.	
Potential to Harm Human Health or the Environment	<b>X</b>
Potential to Impact Administration	

**Gravity and Extent**

Gravity Explanation: Failing to operate in accordance with a permit or approval has moderate gravity per ARM 17.4.303(5)(b)(ii).
Extent Explanation: Of the 28 effluent limit exceedances, 21 were considered to be significant non-compliance which is a major deviation from the requirements. Extent is major per ARM 17.4.303(4)(a).

**Harm to Human Health or the Environment**

	Gravity			
Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	Gravity and Extent Factor: <b>0.70</b>

**Impact to Administration**

	Gravity			
Major	Moderate	Minor		
0.50	0.40	0.30	Gravity Factor:	

**BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor): \$7,000.00**

**II. ADJUSTED BASE PENALTY**

**A. Circumstances (up to 30% added to Base Penalty)**

Explanation:	
As a permitted entity, Darby had control over the violations, but did not take reasonable precautions to prevent them. Further, Darby should have knowledge of the regulations that were violated and should have been able to foresee that the effluent limit exceedances would result in violations. Per ARM 17.4.304(a-d), DEQ is increasing the base penalty by 20% to account for Darby's culpability associated with the violation.	
Circumstances Percent:	0.20
Circumstances Adjustment (Base Penalty x Circumstances Percent)	\$1,400.00

**B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)**

Explanation:	
Darby has retained an engineering firm and plans to make improvements to its WWTF. Therefore, DEQ is reducing the base penalty by five percent for good faith and cooperation.	
Good Faith & Coop. Percent:	0.05
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)	\$350.00

**C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)**

Explanation:	
Darby has not provided any evidence they have expended funds beyond that which is required for compliance. Therefore, DEQ is not reducing the base penalty for amounts voluntarily expended.	
AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)	\$0.00

**ADJUSTED BASE PENALTY SUMMARY**

Base Penalty	\$7,000.00
Circumstances	\$1,400.00
Good Faith & Cooperation	-\$350.00
Amt. Voluntarily Expended	\$0.00
<b>ADJUSTED BASE PENALTY</b>	<b>\$8,050.00</b>

**III. DAYS OF VIOLATION**

Explanation:	
Taking into account the two year statute of limitations for assessing penalties, DEQ is calculating a penalty for one day for each monitoring period from September 30, 2021 to October 31, 2022, that an effluent limit violation was in significant non-compliance. Therefore, DEQ is calculating a penalty based on five days of violation.	
Number of Days:	5
<b>ADJUSTED BASE PENALTY x NUMBER OF DAYS:</b>	<b>\$40,250.00</b>


**IV. OTHER MATTERS AS JUSTICE MAY REQUIRE**

Explanation:	
N/A	
<b>OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:</b>	

**V. ECONOMIC BENEFIT**

Explanation:	
DEQ does not believe Darby realized an economic benefit for these violations.	
<b>ECONOMIC BENEFIT REALIZED:</b>	<b>\$0.00</b>

**Department of Environmental Quality - Enforcement Program  
Penalty Calculation Summary**

Responsible Party Name:	Town of Darby (Darby)
FID:	2863
Statute:	Water Quality Act
Maximum Daily Penalty per Violation:	\$10,000.00
Date:	7/27/2022
Signature of Employee Calculating Penalty:	Margarite Juarez Thomas 

**Penalty #1**

**I. Base Penalty (Maximum Penalty Authority x Matrix Factor)**

Maximum Penalty Authority: \$10,000.00  
 Percent Harm - Gravity and Extent: 0.70  
 Percent Impact - Gravity: 0.00  
**Base Penalty: \$7,000.00**

**II. Adjusted Base Penalty**

Base Penalty: \$7,000.00  
 Circumstances: \$1,400.00  
 Good Faith and Cooperation: -\$350.00  
 Amount Voluntarily Expended: \$0.00  
**Adjusted Base Penalty: \$8,050.00**

**III. Days of Violation or**

**Number of Occurrences** 5  
**Total Adjusted Penalty:** \$40,250.00

\$40,250.00

**IV. Other Matters as Justice**

**May Require** \$0.00

**V. Economic Benefit** \$0.00

**VI. History\***

Subtotal(s) \$ -  
 \$40,250.00

\$0.00

\$40,250.00

**Total calculated penalty: \$40,250.00**

\*Darby does not have a prior history of violations of the Water Quality Act documented in either an administrative order, judicial order, or judgment within the last three years.



**RESPONDENT: TOWN OF DARBY WWTF**  
**ATTACHMENT A : Effluent Limitation Exceedance Violations**

**2023**

Outfall	Parameter Desc	Monitoring Period End Date	Permit Limits			DMR VALUE	Percent Exceedance	SNC*
001-A	pH	05/31/2023	9	SU	(3)	9.1		

**2022**

Outfall	Parameter Desc	Monitoring Period End Date	Permit Limits			DMR VALUE	Percent Exceedance	SNC*
001-A	BOD, carbonaceous [5 day, 20 C]	05/31/2022	40	mg/L		51.	28	
001-A	BOD, carbonaceous [5 day, 20 C]	05/31/2022	60	mg/L		89.	48	Yes
001-A	pH	05/31/2022	9	SU	4	10.6		
001-A	BOD, carbonaceous [5 day, 20 C]	06/30/2022	75	lb/d		9.1		
001-A	pH	06/30/2022	9	SU	4	9.8		
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2022	38	lb/d		237.44	525	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2022	40	mg/L		182.5	356	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2022	60	mg/L		270.	350	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2022	75	lb/d		351.28	368	Yes
001-A	BOD, carbonaceous, percent removal	10/31/2022	65	%		46.	54	Yes
001-A	E. coli, MTEC-MF	10/31/2022	126	#/100mL		620.25	392	Yes
001-A	E. coli, MTEC-MF	10/31/2022	252	#/100mL	(3)	884.	251	Yes

**2021**

Outfall	Parameter Desc	Monitoring Period End Date	Permit Limits			DMR VALUE	Percent Exceedance	SNC*
001-A	E. coli, MTEC-MF	04/30/2021	126	#/100mL		974.04	673	Yes
001-A	E. coli, MTEC-MF	04/30/2021	252	#/100mL	(3)	1732.9	588	Yes
001-A	pH	05/31/2021	9	SU	4	9.6		
001-A	Solids, total suspended	05/31/2021	135	lb/d		166.98	24	
001-A	BOD, carbonaceous [5 day, 20 C]	09/30/2021	38	lb/d		211.83	457	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	09/30/2021	40	mg/L		153.5	284	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	09/30/2021	60	mg/L		300.	400	Yes
001-A	BOD, carbonaceous, percent removal	09/30/2021	65	%		33.	91	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2021	38	lb/d		182.45	380	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2021	40	mg/L		132.5	231	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2021	60	mg/L		260.	333	Yes
001-A	BOD, carbonaceous [5 day, 20 C]	10/31/2021	75	lb/d		359.	379	Yes
001-A	BOD, carbonaceous, percent removal	10/31/2021	65	%		63.	6	
001-A	E. coli, MTEC-MF	10/31/2021	252	#/100mL	(3)	411.	63	Yes

**2020**

Outfall	Parameter Desc	Monitoring Period End Date	Permit Limits		DMR VALUE	Percent Exceedence	SNC*
001-A	E. coli, MTEC-MF	06/30/2020	126	#/100mL	479.9	281	Yes
001-A	E. coli, MTEC-MF	06/30/2020	252	#/100mL	(3) 561.	123	Yes
001-A	E. coli, MTEC-MF	10/31/2020	126	#/100mL	129.6	3	

(1) Average Monthly Limit		<b>Significant Non-compliance</b>
(2) Average Weekly Limit		
(3) Average Daily Limit		(pH of 0.5 SU above or below permit limit is a Group I Pollutant SNC)
(4) Instantaneous		II - Group II Pollutant Exceeds Limit by 20% or more