



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

September 27, 2021

Ref: 8WD-CWW

VIA ELECTRONIC FILING AND EMAIL

Emilio Cortes
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001
Clerk_EAB@epa.gov

Scott G. Knudson
Andrew S. Dosdall
Taft Stettinius & Hollister LLP
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
sknudson@taftlaw.com
adosdall@taftlaw.com

Mike Faith, Chairman
Standing Rock Sioux Tribe
North Standing Rock Avenue, Building 1
Fort Yates, ND 58538
mfaith@standingrock.org

RE: Wulf Cattle Depot, NPDES Permit No. SD-0034606, NPDES Appeal No. 21-02
Notice Withdrawal

Dear Messrs. Cortes, Knudson and Dosdall, and Chairman Faith:

Pursuant to 40 C.F.R. § 124.19(j), Region 8 of the U.S. Environmental Protection Agency (EPA or the Region) is hereby withdrawing National Pollutant Discharge Elimination System (NPDES) Permit No. SD-0034606 (Permit) issued to Wulf Cattle Depot (Wulf Cattle) on January 28, 2021, for the Concentrated Animal Feeding Operation it operates in McLaughlin, South Dakota, within the exterior boundary of the Standing Rock Sioux Reservation.

On February 19, 2021, Wulf Cattle timely filed a Notice of Appeal and Unopposed Motion for

Extension of Time to File Appeal Brief with the Environmental Appeals Board (Board). The Board granted Wulf Cattle's request on February 23, 2021. During the pendency of the extension, and during subsequent stays of proceedings requested by EPA and granted by the Board, Wulf Cattle and the Region have discussed the concerns that led to the filing of the initial Notice of Appeal. During this time, the Region has also participated in six government-to-government consultation meetings with the Standing Rock Sioux Tribe concerning the challenged permit and a variety of environmental conditions in the Town of McLaughlin. The Tribe has also requested the opportunity to engage EPA in mediation with a third-party neutral to further discuss these issues.

Under regulations governing the EAB appeal process, at any time prior to thirty (30) days after filing the response to a petition, EPA may withdraw a permit or portion of a permit and prepare a new draft permit addressing the portions so withdrawn. *See* 40 C.F.R. § 124.19(j). Because EPA has not yet filed a response to a petition in this case, the option of permit withdrawal remains available. Based on its discussions with Wulf Cattle and the Tribe, and after careful consideration and coordination with other offices within the Agency, EPA has decided to withdraw the Wulf Cattle permit in its entirety as of today. This will allow EPA time to participate in mediation with the Tribe, and potentially Wulf Cattle, and develop a revised renewal permit. Once EPA has completed these processes, it will conduct public notice and comment on the revised renewal permit consistent with 40 C.F.R. §§ 124.6 and 124.19(j). Until the issuance of a new final permit, Wulf Cattle Depot will retain permit coverage under the administratively continued permit originally issued on April 15, 2013.

If you have any questions regarding this notification, please contact Everett Volk, Senior Assistant Regional Counsel, at (303) 312-7290, or by email at volk.everett@epa.gov.

Sincerely,

Humberto Garcia, Acting Director
Water Division

cc: Peter Capossela, Outside Counsel
Standing Rock Sioux Tribe

Doug Crow Ghost, Director
Standing Rock Sioux Tribe Department of Water Resources

Allyson Two Bears, Director
Standing Rock Sioux Tribe Department of Environmental Regulation/EPA