



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

JUN 17 2011

CERTIFIED MAIL LETTER
RETURN RECEIPT REQUESTED

Ms. Sandra Lemke, Acting Mayor
City of Dupree
P.O. Box 276
Dupree, SD 57623

Re: Findings of Violation and Order for
Compliance
City of Dupree WWTF
Docket No. **CWA-08-2011-0016**

Dear Mayor Lemke:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance (Order) issued to the City of Dupree (City) for alleged violations of the Clean Water Act (Act) and National Pollutant Discharge Elimination System (NPDES) permit from the City's wastewater treatment facility. The authority for EPA to issue this Order is provided under Section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary for the City to achieve compliance with the Act. Specifically, the Order requires the City to repair within thirty (30) days the broken sewer line flowing into the lift station responsible for the continuous unauthorized discharge of untreated wastewater/domestic sewage into Bear Creek beginning on or before March 1, 2011.

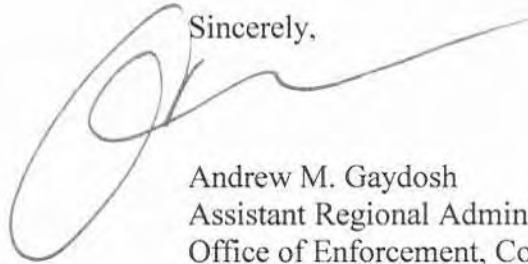
The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued thereunder. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil, criminal, or administrative action. (See 33 U.S.C. § 1319, subsections (b), (c), (d), and (g).) Please be advised that issuance of this Order does not preclude civil or criminal U.S. District Court action or EPA administrative penalty proceedings for the violations cited in the Order. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet. The SBREFA sheet notifies small entities of their right to comment on regulatory enforcement activities and provides information on compliance assistance resources

and tools available to small businesses. SBREFA does not eliminate the City's responsibility to comply with the Act or to respond to this complaint.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the City's compliance with the Act, the most knowledgeable people on my staff regarding these matters for legal and technical issues, respectively, are Amy Swanson, Enforcement Attorney, at (303) 312-6906, and Natasha Davis, NPDES Enforcement Unit, at (303) 312-6225.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew M. Gaydosh', written over a horizontal line.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Findings of Violation and Order for Compliance
Small Business Regulatory Enforcement and Fairness Act Information Sheet

cc: Ian Pistulka, City of Dupree Maintenance Director
Kevin Keckler, Cheyenne River Sioux Tribal Chairman
David Nelson, Cheyenne River Sioux Tribe Environmental Director
Carlyle Ducheneaux, Cheyenne River Sioux Tribe Water Quality Coordinator
Tina Artemis, Regional Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VII
HEARING CLERK

In the Matter of)
)
The City of Dupree, South Dakota)
Dupree, South Dakota)
NPDES Permit No. SDG589116)
)
Respondent) Docket No. CWA-08-2011-0016
)
) **FINDINGS OF VIOLATION AND**
) **ORDER FOR COMPLIANCE**
)
) Proceedings Under Section 309(a) of the
) Clean Water Act, 33 U.S.C. § 1319(a)

STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance (Order) is issued pursuant to § 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of, *inter alia*, §§ 301 or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. This authority has been properly delegated to the undersigned Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS OF FACT AND LAW

1. The City of Dupree (Respondent) is a "municipality" as defined in § 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2.
2. Respondent is a municipality and therefore a "person" as that term is defined in § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
3. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.

4. Effective September 14, 2010, EPA issued NPDES General Permit for Wastewater Lagoons in Indian Country, authorizing, in part, operators of wastewater treatment lagoons within the Cheyenne River Sioux Indian Reservation to discharge to waters of the U.S. in accordance with the conditions set forth in the Permit.
5. Effective May 19, 2011, EPA authorized the City of Dupree under Permit no. SDG589116.
6. Respondent owns and/or operates a Category 3 (no discharge) wastewater treatment facility (facility), that includes a sewer collection and conveyance system, a lift station, and a four-cell wastewater treatment lagoon, serving the incorporated City of Dupree.
7. The facility is located within the exterior boundaries of the Cheyenne River Sioux Indian Reservation in South Dakota.
8. The Cheyenne River Sioux Tribe (Tribe) does not own, manage, or control the facility.
9. The facility is a "point source" within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).
10. The facility discharges into Bear Creek, which flows north into the Moreau River before entering the Missouri River. The Missouri River and its tributaries constitute "waters of the United States" within the meaning of 40 C.F.R. § 122.2 and, therefore, navigable waters within the meaning of § 502(7) of the Act, 33 U.S.C. § 1362(7).
11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including § 402 of the Act, 33 U.S.C. § 1342.
12. Wastewater is a "pollutant" within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).

13. Respondent is subject to the requirements of the Act, the Permit, and EPA's regulations implementing the Act.
14. Part 5.1 of the Permit states there shall be no discharge except in accordance with the Permit's bypass provisions. If an unauthorized release is discovered or expected to occur, the permittee shall take the appropriate measures to minimize the discharge of pollutants.
15. Part 6.8.1 of the Permit requires Respondent to report any noncompliance which may endanger health or the environment to EPA and the Tribe within 24 hours of becoming aware of the circumstance.
16. Part 6.8.2 of the Permit requires Respondent to report, in part, any unauthorized discharge by telephone to EPA and the Tribe the first workday following the day of becoming aware of the circumstance.
17. Part 6.8.3 of the Permit requires Respondent within five days of becoming aware of the circumstances to provide EPA and the Tribe with a written submission containing (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times; (3) the estimated time noncompliance is expected to continue if it has not been corrected; and (4) the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
18. Part 7.5 of the Permit requires Respondent to properly operate and maintain at all times all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. At a minimum, Respondent is required to operate once complete set of each main

line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

FINDINGS OF VIOLATION

19. On March 9, 2011, EPA received a phone call from the Cheyenne River Sioux Tribe Environmental Program that the City of Dupree collection system was discharging untreated wastewater from the lift station directly into Bear Creek.
20. EPA contacted the Respondent on March 9, 2011, and was told that the cause of the sanitary sewer overflow (SSO) would be identified and the issue addressed as soon as snow melted and repair equipment could access the site.
21. On March 21, 2011, EPA contacted the Respondent for a status update and was informed that the suspected cause of the SSO was a break in the sewer line leaving the lift station. The problem had not been fixed. The Respondent planned to address the issue as soon as possible.
22. On March 21, 2011 EPA received a written submission from the Respondent via e-mail containing (1) a description of the noncompliance and its assumed cause; (2) the SSO start date of March 1, 2011; (3) a commitment to replace the sewer line; and (4) a commitment to replace other lines as necessary to prevent future SSOs.
23. EPA learned on or about April 4, 2011, that the Respondent did not intend to address the SSO until mid to late summer 2011. The Respondent committed to discuss funding the repairs with City Council.
24. EPA contacted the Respondent to discuss the outcome of the City Council meeting on April 11, 2011. The issue was not discussed at the meeting and EPA has not received updated information on the Respondent's plans to address the SSO.

25. The facility discharged wastewater from an unauthorized outfall from March 1, 2011 to the present, in violation of Part 5.1 of the Permit.
26. The Respondent failed to report the unauthorized discharge to the EPA and the Tribe within 24 hours of becoming aware of the circumstances, in violation of Part 6.8.1 of the Permit.
27. The Respondent failed to report the unauthorized discharge to the EPA and the Tribe by the first workday following the day of becoming aware of the circumstance, in violation of Part 6.8.2 of the Permit.
28. The March 21, 2011 e-mail describing the non compliance was not received within five days of becoming aware of the SSO, in violation of Part 6.8.3 of the Permit.
29. The March 21, 2011 e-mail did not contain all of the required written notification items listed in Part 6.8.3, including the estimated time noncompliance is expected to continue if it has not been corrected, and the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
30. The Respondent failed to properly operate and maintain the collection system, in violation of Part 7.5 of the Permit.

ORDER

31. Within 10 days of receipt of this Order, Respondent shall submit a written notice of intent to EPA to comply with the requirements of this Order.
32. No later than thirty days after receiving this Order, Respondent shall submit to EPA and the Tribe written verification that the SSO has been permanently repaired and an explanation of how the sewer line was repaired, including invoices, photographs and other information documenting that the work has been successfully completed.

33. No later than sixty days after receiving this Order, Respondent shall develop and submit to EPA for review and approval a draft management and operation plan for the collection system that includes, at a minimum, the following elements to prevent SSOs in the future:

(1) Overflow Emergency Response Plan. An overflow emergency response plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit. At a minimum the emergency response plan must include mechanisms to:

- (a) Ensure that Respondent is aware (to the greatest extent possible) of all overflows from portions of the collection system and any unanticipated bypass or upset that exceeds any effluent limitation in the permit;
- (b) Ensure appropriate responses including assurance that reports of an overflow or of an unanticipated bypass or upset that exceeds any effluent limitation in the permit are immediately dispatched to appropriate personnel for investigation and response;
- (c) Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained.

(2) Measures and Activities. Respondent's management and operation plan must address the following elements, including identification of the person or position in its organization responsible for each element:

- (a) Provide adequate maintenance facilities and equipment;
- (b) Maintain a map of the collection system;
- (c) Conduct routine preventive operation and maintenance activities;
- (d) Assess the current dry and wet weather capacities of the collection system and treatment facilities;
- (e) Identify and prioritize structural deficiencies, and identify and implement short-term and long-term rehabilitation actions to address each deficiency;
- (f) Provide appropriate training on a regular basis; and
- (g) Maintain equipment and replacement parts inventories including identification of critical replacement parts.

(3) Design and Performance Provisions. Respondent must establish:

- (a) Requirements and standards for the installation of new sewers, pumps and other appurtenances; and rehabilitation and repair projects; and
- (b) Procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.

(4) Monitoring, Measurement, and Program Modifications. Respondent must:

- (a) Monitor the implementation and effectiveness of each element of its management and operation plan; and
- (b) Update program elements as appropriate based on monitoring or performance evaluations

34. Respondent shall submit a final management and operation plan to EPA and the Tribe within 30 days of receiving and addressing EPA's comments.

35. All notices and reports to EPA required by this Order shall be given to:

Natasha Davis (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

36. All notices and reports to the Tribe required by this Order shall be given to:

Carlyle Ducheneaux, Water Quality Coordinator
Cheyenne River Sioux Tribe
P.O. Box 590
Eagle Butte, SD 57625

37. All reports and information required by this Order shall include the following certification statement, signed and dated by either a principal executive officer or a ranking elected official for Respondent, or a duly authorized representative of such person:

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

38. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondent to penalties as provided under § 309 of the Act, 33 U.S.C. § 1319.

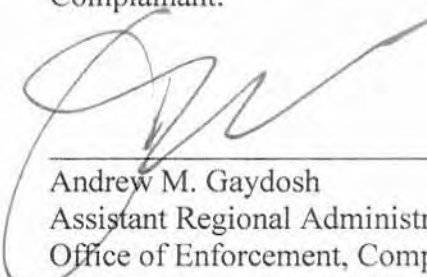
39. This Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under

the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

40. Nothing in this Order shall be construed to preclude further action under § 309 of the Act for those violations cited herein or relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.
41. This Order shall be effective upon receipt by Respondent.

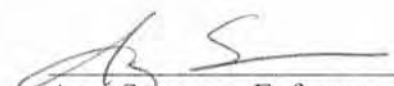
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: 6/16/2011



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

Date: 6/17/2011



Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, CO 80202-1149
Colorado Atty. Reg. No. 26488
Telephone: 303/312-6906
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the preceding Administrative Order for Compliance were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202, and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Sandra Lemke, Acting Mayor
City of Dupree
P.O. Box 276
Dupree, SD 57623

Date: 6/17/2011

By: Judith M McTernan