

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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| IN THE MATTER OF: | Docket No. CWA-08-2024-0022 |
| Northern Arapaho Utilities, Respondent | ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT |
| Beaver Creek Lagoon Facility | Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3) |

INTRODUCTION

1. This Administrative Order for Compliance on Consent (Consent Order) is issued pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the undersigned EPA official.
2. The Respondent in this Consent Order is the Northern Arapaho Utilities.
3. This Consent Order pertains to Clean Water Act noncompliance at the Beaver Creek Lagoons (Facility) located in the Town of Riverton on the Wind River Reservation in Wyoming.

STATUTORY AND REGULATORY BACKGROUND**The Clean Water Act**

4. In order to restore and maintain the integrity of the nation's waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
5. The Act defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
6. The Act defines "pollutant" to include "sewage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).
7. The Act defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
8. The Act defines "point source" 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).

The NPDES Program

9. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA (and states or tribes with authorization from the EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
10. EPA implements the NPDES program on the Wind River Reservation, as no other governmental entity has been approved to implement it there.
11. On May 6, 2019, EPA issued Respondent general permit number WYG589107 (2016 Permit) for the Facility under the NPDES program.
12. The 2016 Permit became effective on January 1, 2016, and expired on December 31, 2020, but was administratively continued. The 2021 inspection was conducted under this 2016 Permit.
13. Respondent’s 2016 permit required Respondent:
 - a. To prevent the discharge of pollutants except in accordance with the bypass provisions of the 2016 Permit. 2016 Permit part 4.1.
 - b. To monitor unauthorized releases in accordance with part 4.2 of the 2016 Permit.
 - c. To inspect the Facility on at least a weekly basis and maintain a log of those inspections in accordance with part 4.3 of the 2016 Permit.
 - d. To maintain a copy of the NPDES permit on site in accordance with part 5.7 of the 2016 Permit.
 - e. To report any non-compliance within twenty-four (24) hours of becoming aware of the circumstances and to submit a written report within 5 days in accordance with part 5.8 of the 2016 Permit.
 - f. To at all times properly operate and maintain 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 2016 Permit in part 6.5.

- g. To notify the EPA of any new introductions by new or existing industrial users or any substantial change in volume or character of pollutants being introduced. 2016 Permit parts 6.9.5 and 6.9.5.2.
- 14. On November 21, 2022, EPA issued Respondent general permit number WYG589107 (2022 Permit) for the Facility under the NPDES program.
- 15. General permit number WYG589107 became effective on December 1, 2022, and expires on March 31, 2027.
- 16. Respondent's 2022 Permit requires Respondent:
 - a. To prevent the discharge of pollutants except in accordance with the bypass provisions of the permit. 2022 Permit part 3.2.
 - b. To monitor unauthorized releases in accordance with part 3.2 of the 2022 Permit.
 - c. To inspect the Facility on at least a weekly basis and maintain a log of those inspections in accordance with part 6.5 of the 2022 Permit.
 - d. To maintain a copy of the NPDES permit on site in accordance with part 5.9 of the 2022 Permit.
 - e. To report any non-compliance within twenty-four (24) hours of becoming aware of the circumstances and to submit a written report within 5 days in accordance with part 5.10 of the 2022 Permit.
 - f. To at all times properly operate and maintain 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 this permit in part 6.6 of the 2022 Permit.
 - g. To notify the EPA of any new introductions by new or existing industrial users or any substantial change in volume or character of pollutants being introduced. 2022 Permit parts 6.11.5 and 6.11.5.2.
 - h. To maintain an operations and maintenance manual for the Facility per part 6.6 of the 2022 Permit.

FINDINGS

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

17. The Facility is located on the Wind River Reservation.
18. The Northern Arapaho Tribe is a federally recognized Indian tribe.
19. Respondent is an Indian tribal organization organized under the laws of the Northern Arapaho Tribe.
20. Respondent is a “municipality,” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4).
21. Respondent is a “person” as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).
22. Respondent owns the Facility.
23. Respondent is the operator of the Facility.
24. The facility discharges to the Little Wind River, which is a relatively permanent tributary of the Wind River, which is a traditional navigable water.
25. The Wind River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
26. On June 30, 2021, EPA inspectors performed an inspection of the Facility and observed the following alleged conditions:
 - a. Respondent failed to properly maintain the lagoon berms which compromised the integrity of cells 3, 4, and 5, in violation of part 6.5 of the 2016 Permit.
 - b. Respondent failed to comply with part 4.1 of the 2016 Permit when unauthorized releases occurred in approximately 2018 and 2019.
 - c. Respondent failed to sample, report, and notify EPA of unauthorized releases in accordance with parts 4.1, 4.2, and 5.8 of the 2016 Permit.
 - d. Respondent failed to address capacity issues with lagoon in accordance with parts 4.1 and 6.9 of the 2016 Permit.
 - e. Respondent failed to properly operate and maintain the Beaver Creek Housing lift station per part 6.5 of the 2016 Permit.
 - f. Respondent failed to keep a copy of the O&M manual as well as records of maintenance operations for the Facility.
27. Since the June 30, 2021 EPA inspection, Respondent has:
 - a. Provided logs indicating that weekly inspections are now being conducted at the facility as required by parts 4.3 of the 2016 Permit.

- b. Shown how to access the current version of the Permit online fulfilling the requirements of part 5.7 of the 2016 Permit.
- c. A technical assistance provider helped the Respondent develop operation and maintenance (O&M) manuals for the Facility, including an O&M manual for the lift station; however, the O&M manuals have not been implemented fully.

ORDER

Based on the foregoing findings and pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), it is hereby ORDERED, and the Respondent agrees, that:

- 28. Respondent shall comply with all terms of the 2022 Permit, permit number WYG589107.
- 29. Respondent shall:
 - a. Within three months from the effective date of the Consent Order, choose an option to implement from the preliminary engineering report (PER) that was submitted on August 9, 2023, and inform EPA of the choice. Immediately begin implementation of the option chosen from the PER. Respondent shall provide the EPA contact listed in paragraph 31 quarterly update reports (January 1st, April 1st, July 1st, and October 1st) until the approved upgrades are complete, at which point Respondent shall provide a final update report notifying EPA of the completion of the upgrades.
 - b. Within three months from the effective date of the Consent Order, develop and provide to the EPA standard operating procedures (SOPs) to ensure that all required self-monitoring is conducted during any future unauthorized release events, including sanitary sewer overflows. Additionally, ensure the twenty- four (24) hour notice of any noncompliance and five (5)-day written submissions are reported to EPA.
 - c. Within six months from the effective date of the Consent Order, fix or replace the pump(s) at the Beaver Creek Housing lift station and provide the EPA with the date the lift station pump(s) were fixed or replaced and photos or documentation showing the corrective action.
 - d. On the effective date of this Consent Order, implement the O&M manuals and

schedules for the Facility, including left stations and conveyance system, in accordance with part 6.6 of the 2022 Permit. Within 6 months of the effective date of this Consent Order, provide a summary of the O&M that you have performed at the Facility since the implementation of the O&M manuals.

30. The time periods in this Consent Order are calendar days unless otherwise specified. If any due date specified in this Consent Order falls on a weekend or federal holiday, the relevant deadline shall be the first business day following that date.
31. All notices and reports required by the Consent Order to be given to the EPA shall be sent via email to the following recipient. If an email is not a feasible manner of providing notifications, Respondent shall contact the following individual by telephone to make alternative arrangements.

Brit Rustad
Rustad.brit@epa.gov
(303) 312-6885

32. All reports and information required by this Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a ranking elected official:

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.

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

34. This Consent Order is not a permit and does not constitute a waiver or modification of the terms and conditions of any permit.
35. This Consent 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 civil penalties of up to \$66,712 (as adjusted for inflation by 40 C.F.R. part 19) 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.
36. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of their obligation to comply with any applicable federal, state, tribal, or local law or regulation.
37. In signing this Consent Order, Respondent neither admits nor denies the Findings in paragraphs 17 through 27, above. Without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent further agrees not to challenge the jurisdiction of the EPA or the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.
38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent to the terms and conditions of this Consent Order.
39. This Consent Order shall be effective immediately upon receipt by Respondent.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

Date: _____

By: _____

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6925

Northern Arapaho Utilities
Respondent

Date: 9-19-2024 By: Lloyd Goggles NABC Chairman
[NAME, TITLE]
[PHONE/EMAIL]
lloyd.goggles@northernarapaho