



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

SEP 30 2010

Ref: 8ENF-W-NP

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

The Honorable John Bachman, Mayor  
City of Eagle Butte  
280 South Main  
Eagle Butte, SD 57625

Re: Findings of Violation and Order for  
Compliance under Section 309 of the  
Clean Water Act  
Docket No. **CWA-08-2010-0040**  
AND  
Proposed Assessment of Class I  
Civil Penalty under Section 309 of  
the Clean Water Act  
Docket No. **CWA-08-2010-0041**

Dear Mayor Bachman:

Enclosed are a Findings of Violation and Order for Compliance (Order) and Penalty Complaint and Notice of Opportunity for Hearing (Complaint). The United States Environmental Protection Agency (EPA) is issuing the Order and Complaint pursuant to § 309(a) of the Clean Water Act, as amended (Act), 33 U.S.C. § 1319(a). Based on our review of all available information, EPA has determined that the City of Eagle Butte Wastewater Treatment Facility (City or Respondent) is in violation of the National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342.

The Order specifies the nature of the violations of the NPDES permit and describes the actions necessary for the City to achieve compliance. Specifically, the Order requires the City to comply with the NPDES permit (SD0020192) discharge notification requirements, sampling and analysis stipulations, and submittal of discharge monitoring reports.

The Complaint proposes a penalty of \$10,000 be assessed for failure to comply with the NPDES permit. The Respondent has the right to a hearing to contest the factual allegations in the Complaint, or the appropriateness of the proposed penalty. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA follows in administrative civil penalty assessments.

**If the City wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file an answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Region VIII Hearing Clerk at the following address:**

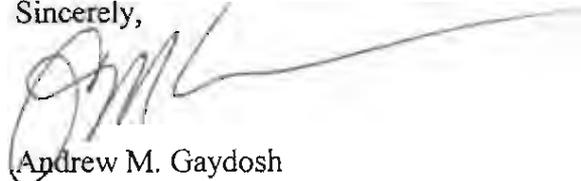
Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

If the City does not file an answer within 30 days [see 40 C.F.R. § 22.15(d)], it may be found in default. A default judgment may impose the full penalty of \$10,000 proposed in the Complaint.

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations (see 40 C.F.R. § 22.18). If a mutually satisfactory settlement can be reached, it will be formalized in a consent agreement signed by you and the delegated authority for EPA. Upon final approval of the consent agreement by the Regional Judicial Officer, the City will be bound by the terms of the consent agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon penalty. The City has the right to be represented by an attorney at any stage of the proceedings, including informal discussions with EPA.

If you have any questions regarding this letter, the order or complaint, or any other matters pertinent to compliance with the Act, the most knowledgeable people on my staff regarding these matters are Natasha Davis, Technical Enforcement, at (303) 312-6225, and David J. Janik Senior Enforcement Attorney, at (303) 312-6917.

Sincerely,



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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk  
Honorable Joeseph Brings Plenty, Sr., Chairman, Cheyenne River Sioux Tribe  
David Nelson, Environmental Director, Cheyenne River Sioux Tribe

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY** 2010 SEP 30 AM 10:55  
**REGION 8**

In the Matter of )  
 )  
City of Eagle Butte, South Dakota )  
 )  
Respondent )

Docket No. CWA-08-2010-0040  
FILED  
EPA REGION VIII  
READING CLERK

**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**

This Administrative Compliance Order (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (the "Act"), 33 U.S.C. §1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. This Order is also issued pursuant to section 308(a) of the Clean Water Act, 33 U.S.C. §1318(a), which authorizes the Administrator of the EPA to require reports necessary to determine compliance. These authorities have been delegated to the undersigned official.

**BACKGROUND**

1. In order to restore and maintain the integrity of the nation's water, 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.
2. 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.

3. The City of Eagle Butte (“Respondent”) is an incorporated “municipality” of the State of South Dakota as defined in section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. §122.2.
4. Respondent is a municipality and therefore a “person” as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. §122.2.
5. Effective July 1, 2006, the EPA issued NPDES Permit No. SD0020192 (the “Permit”), authorizing Respondent to discharge treated effluent from Respondent’s wastewater treatment facility (the “Facility”) to the Green Grass Creek, in accordance with the conditions set forth in the Permit.
6. The Facility is within the exterior boundaries of the Cheyenne River Sioux Indian Reservation in South Dakota.
7. The Cheyenne River Sioux Tribe (the “Tribe”) does not own, manage, or control the Facility.
8. Respondent is subject to the requirements of the Act, the Permit, and the EPA’s regulations implementing the Act.
9. Part 1.3.2. of the Permit (p. 5) requires Respondent to request permission to discharge prior to the start of any discharge from the treatment system. The request for permission to discharge shall include (1) grab sample results for Biochemical Oxygen Demand (BOD<sub>5</sub>), Total Suspended Solids (TSS), pH, and Escherichia coli (E.coli) (from May 1 to September 30) from the treatment unit from which it is desired to discharge, (2) why a discharge is needed, (3) when the discharge would start, (4) the expected duration of the discharge, (5) the outfall(s) from which the discharge will occur, (6) the lagoon cell(s)

that will be drawn down, (8) the approximate volume of water to be discharged, and (9) the estimated flow condition of the receiving water.

10. Part 2.11. of the Permit (p. 10) requires Respondent to give seventy-two hour notice to the Tribe before a planned discharge and immediate notice of an unplanned discharge.
11. Part 1.3.2.2. of the Permit (p. 6) requires Respondent to monitor the Facility's effluent for flow, BOD<sub>5</sub>, TSS, and pH at the beginning, middle, and end of the discharge if the discharge is less than one week, while discharge is occurring. If a single, continuous discharge is greater than one week in duration three (3) samples shall be taken during the first week and one (1) during each following week.
12. Part 1.3.2.2. of the Permit (p. 6) requires Respondent to monitor the Facility's effluent for E.coli each day for the first five (5) days of discharge and then weekly thereafter until the discharge is terminated, if the discharge occurs between May 1 and September 30.
13. Part 2.4. of the Permit (p. 8) requires Respondent to submit effluent monitoring results for each calendar quarter to the EPA and the Tribe, using a Discharge Monitoring Report ("DMR"). Each DMR is to be on EPA Form No. 3320-1 and is to be postmarked no later than the 28<sup>th</sup> day of the month following the end of the completed monitoring period. If no discharge occurs during the reporting period, Respondent is required to indicate "no discharge" on the DMR.
14. Part 1.3.1. of the Permit (p. 5) prohibits the pH of the effluent from the Facility from having a pH of less than 6.0 or exceeding 9.0 standard units (s.u.) in any single sample or analysis.
15. Part 2.8 of the Permit (pp. 9-10) require Respondent to report any violations of maximum daily discharge limitations for any of the pollutants listed in the permit to EPA and the

Tribe by the first workday following the day the permittee became aware of the circumstances.

16. Part 2.9. of the Permit (p. 10) require Respondent to report any instances of noncompliance with permit conditions (other than noncompliance which may endanger health and environment, which must be reported within 24 hours) to EPA and the Tribe at the time that monitoring reports are submitted, with each report by Respondent must specify (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.

#### **VIOLATIONS**

17. In the month of May 2009, Respondent received permission to discharge from the EPA. Respondent failed to monitor the Facility's effluent for flow, in violation of Part 1.3.2.2. of the Permit.
18. In the month of May 2009, Respondent failed to visually monitor the Facility's effluent for floating solids or foam, in violation of Part 1.3.2.2. of the Permit.
19. In the month of May 2009, Respondent failed to visually monitor the Facility's effluent for oil and grease, in violation of Part 1.3.2.2. of the Permit.
20. In the month of May 2009, Respondent allowed the pH in the Facility's effluent to exceed 9.0 s.u., in violation of Part 1.3.1. of the Permit.
21. In the month of May 2009, Respondent failed to provide EPA with any notification of the effluent pH daily maximum limit violation, in violation of Part 2.8. of the Permit.

22. In the month of March 2010, Respondent failed to request permission from the EPA prior to releasing a discharge from the Facility, in violation of Part 1.3.2. of the Permit.
23. In the month of March 2010, Respondent failed to request permission to discharge from the EPA, in violation of Part 1.3.2. of the Permit.
24. In the month of March 2010, Respondent failed to report the unauthorized discharge to EPA, in violation of Part 2.9 of the Permit.
25. In the month of March 2010, Respondent failed to notify the Tribe of a discharge, in violation of Part 2.11. of the Permit.
26. For the months of July through December of 2009, and January through June of 2010, Respondent failed to submit any DMRs to the EPA, in violation of Part 2.4. of the permit.

#### **ORDER**

27. Effective immediately, Respondent shall perform all monitoring required by Part 1.3.2.2. of the Permit for any discharge, including monitoring of the Facility's effluent for (a) flow, (b) BOD<sub>5</sub>, (c) TSS, (d) pH, (e) visible floating solids, and (f) visible oil sheen at the beginning, middle and end of the discharge if the discharge is less than one week, while discharge is occurring, and (g) E.coli each day for the first five (5) days of discharge and then weekly thereafter until the discharge is terminated, if the discharge occurs between May 1 and September 30.
28. Effective immediately, Respondent shall submit quarterly DMRs to the EPA and the Tribe, using EPA Form No. 3320-1 and postmarking each DMR no later than the 28<sup>th</sup> day of the month following the completed reporting period, as required by section 2.4 of the Permit.

29. Effective immediately, Respondent shall submit all sample analysis data with quarterly DMRs to the EPA and the Tribe.
30. Effective immediately, Respondent shall not allow the pH of the Facility's effluent to exceed 9.0 or be less than 6.0.
31. No later than ten days after receiving this Order, Respondent shall submit to the EPA and the Tribe any monitoring results for the Facility that Respondent has not previously submitted to EPA and the Tribe.
32. No later than ten days after receiving this Order, Respondent shall submit to the EPA and the Tribe DMRs for each of the months of July through December of 2009, and January through June of 2010.
33. No later than thirty days after receiving this Order, Respondent shall submit to EPA and the Tribe a written explanation of the reasons for each violation cited in this Order and a description of the steps Respondent has taken and intends to take to ensure future compliance with the Permit.
34. No later than thirty days after receiving this Order, Respondent shall demonstrate the capability to analyze pH within fifteen (15) minutes of an effluent sample by either acquiring a field pH meter or use of a laboratory pH meter within 15 minutes of taking a pH sample.
35. All notices and reports required by this Order to be given to the EPA shall be given to:  
  
Natasha Davis (8ENF-W)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129
36. All notices and reports required by this Order to be given to the Tribe shall be given to:

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 section 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.

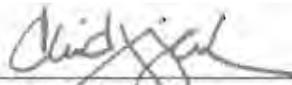
40. Nothing in this Order shall be construed to preclude further action under section 309 of the Act for those violations cited herein or relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.
41. This Order shall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

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

Date: 9/23/2010

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

Date: 9/30/2010

  
\_\_\_\_\_  
David Janik, Enforcement Attorney  
Legal Enforcement Program

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

**§21.13 Effect of certification upon authority to enforce applicable standards.**

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

**PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS**

**Subpart A—General**

- Sec.
- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

**Subpart B—Parties and Appearances**

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

**Subpart C—Prehearing Procedures**

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

**Subpart D—Hearing Procedures**

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

**Subpart E—Initial Decision and Motion to Reopen a Hearing**

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.