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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)	Docket No. CWA-08-2019-0006
)	
)	ADMINISTRATIVE ORDER ON
Two Medicine Water Company,)	CONSENT
)	
)	
Respondent.)	

INTRODUCTION

This Administrative Order on Consent (Consent Order) concerning the Browning Lagoon Wastewater Treatment Facility is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Two Medicine Water Company (TMWC), an organization of the Blackfeet Tribe (Tribe) of the Blackfeet Indian Reservation of Montana (Reservation), to carry out the goals of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

STATUTORY AUTHORITY

The following FINDINGS OF FACT AND CONCLUSIONS OF LAW are made and ORDER issued pursuant to the authority vested in the Administrator of the EPA by section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), and as further delegated to the undersigned official. The Consent Order and the compliance agreed to herein are based on the FINDINGS OF VIOLATION of sections 301 and/or 402 of the CWA, and of any permit condition or limitation implementing such CWA sections.

PARTIES BOUND

This Consent Order shall apply to and be binding upon the EPA and upon the TMWC and its officers, employees, agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this

Consent Order. No change in the ownership or control of the TMWC, including without limitation, any change in ownership or operation of the facilities operated and maintained by the TMWC referenced in this Consent Order, shall alter the TMWC's responsibilities under this Consent Order unless the EPA, the TMWC, and the successor in interest agree in writing to allow the successor to assume such responsibilities. Additionally, no later than 30 calendar days prior to such transfer, the TMWC shall notify the EPA of the transfer by the method described in paragraph 5 of this Consent Order.

STATEMENT OF THE PARTIES

The following FINDINGS OF FACT AND CONCLUSIONS OF LAW are made by the EPA and the TMWC. In signing this Consent Order, the TMWC neither admits nor denies the FINDINGS OF VIOLATION. As such, and without any admission of liability, the TMWC consents to issuance of this Consent Order and agrees to abide by all the conditions herein. The TMWC waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the TMWC may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review of this section 309(a)(3) Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The TMWC further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND CONCLUSIONS OF LAW below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

1. Section 301(a) of the CWA, 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 CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program under which the EPA may authorize discharges into navigable waters, subject to specific terms and conditions.
3. Effective January 1, 2016, the EPA issued the NPDES General Permit for Wastewater Lagoons in Indian Country MTG589### (General Permit) authorizing, in part, operators of wastewater treatment lagoons located on the Reservation to discharge to waters of the United States in accordance with the conditions set forth in the General Permit.
4. Wastewater is a “pollutant” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
5. The Tribe is a federally recognized tribe under section 104 of the Federally Recognized Indian Tribe List Act, now codified at 25 U.S.C. § 5131, and 86 Fed. Reg. 7554, 7554 (January 29, 2021).
6. The TMWC is an Indian tribal organization authorized under the laws of the Tribe.
7. The TMWC is a “municipality” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2, for federal enforcement purposes.
8. The TMWC is a “person” as that term is defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, for federal enforcement purposes.

9. The TMWC provides wastewater treatment services and drinking water treatment services to the communities located within the exterior boundaries of the Reservation.
10. The TMWC operates and maintains multiple wastewater treatment facilities and a drinking water facility on behalf of the Tribe throughout the Reservation.

Browning Lagoon Wastewater Treatment Facility

11. The TMWC operates and maintains the Browning Lagoon Wastewater Treatment Facility.
12. The Browning Lagoon Wastewater Treatment Facility is a wastewater treatment facility consisting of a sanitary sewer collection system and wastewater treatment lagoons.
13. The Browning Lagoon Wastewater Treatment Facility is a “point source” within the meaning of section 502(14) of the CWA, U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
14. The Browning Lagoon Wastewater Treatment Facility discharges wastewater into an unnamed tributary of Willow Creek.
15. The unnamed tributary of Willow Creek flows into Willow Creek, which flows into Cut Bank Creek, which flows into the Marias River, a tributary of the Missouri River.
16. The Missouri River and its tributaries listed above constitute “waters of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, are navigable waters within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
17. On May 22, 2014, the EPA issued the TMWC coverage authorization under the General Permit for the Browning Lagoon Wastewater Treatment Facility under permit number MTG589006. This coverage began on May 22, 2014, expired on September 14, 2015, authorized discharge of treated effluent and required monthly monitoring.

18. On July 5, 2018, the EPA reissued the TMWC coverage authorization under the General Permit for the Browning Lagoon Wastewater Treatment Facility under permit number MTG589104. This coverage began on July 5, 2018, and the permit was to expire on December 31, 2020, but has been administratively continued by EPA. It authorizes discharges and requires subcategory A/monthly monitoring.

19. The Browning Lagoon Wastewater Treatment Facility's coverage under the General Permit requires the TMWC to comply with the following effluent limitations from Part 3.1:

- a. Oil and Grease: 10 mg/l, nor shall there be any visible sheen in the receiving water or adjoining shoreline;
- b. 5-day Biochemical Oxygen Demand: 30-day average, 30 mg/l; 7-day average, 45 mg/l;
- c. Total Ammonia Nitrogen: Daily maximum, 7.15 mg/l;
- d. pH: minimum, 6.5, maximum, 9.0;
- e. Total Suspended Solids: 30-day average, 30 mg/l; 7-day average, 45 mg/l; and
- f. *Escherichia coli*: 30-day average, 126 cfu/100 ml; Daily maximum, 410 cfu/100 ml.

20. The Browning Lagoon Wastewater Treatment Facility's coverage under the General Permit requires the TMWC to notify the EPA by telephone within 24 hours of noncompliance with discharge limitations and submit a written notice of noncompliance within five days. General Permit Part 5.8.

21. The Browning Lagoon Wastewater Treatment Facility is assigned reporting sub-category A - Monthly, and its coverage under the General Permit requires the TMWC to

summarize and report to EPA the effluent monitoring results obtained in the previous month on a Discharge Monitoring Report (DMR) Form (EPA No. 3320-1), or in the NetDMR format, submitted no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, “no discharge” shall be reported. General Permit Part 5.4.1.

22. TMWC discharged effluent from the Browning Lagoon Wastewater Treatment Facility in violation of the oil and grease visual effluent limitation in the following months:

- a. July, August, September, November, and December 2018;
- b. January, May, June, July, October, November, and December 2020; and
- c. January, February, and March 2021.

23. TMWC discharged effluent from the Browning Lagoon Wastewater Treatment Facility in violation of the biochemical oxygen demand effluent limitation in the following months:

- a. March, April, July, and November 2019;
- b. January, February, March, May, August, and December 2020; and
- c. January, February, and March 2021.

24. TMWC discharged effluent from the Browning Lagoon Wastewater Treatment Facility in violation of the total ammonia nitrogen effluent limitation in the following months:

- a. July, August, October, November, and December 2018;
- b. January, February, March, April, August, September, October, and December 2019;
- c. January, February, March, April, July, August, September, October, November, and December 2020; and
- d. January, February, and March 2021.

25. TMWC discharged effluent from the Browning Lagoon Wastewater Treatment Facility in violation of the pH effluent limitation in the following months:
- a. May 2019;
 - b. September 2020; and
 - c. March 2021.
26. TMWC discharged effluent from the Browning Lagoon Wastewater Treatment Facility in violation of the total suspended solids effluent limitation in the following months:
- a. December 2018;
 - b. January, February, May, July, and November 2019;
 - c. May and August 2020; and
 - d. January and February 2021.
27. TMWC did not submit notice of noncompliance reports within five days of the effluent limit exceedances listed in paragraphs 22 through 26.

FINDINGS OF VIOLATION

Browning Lagoon Wastewater Treatment Facility

28. The TMWC discharged effluent from the Browning Lagoon Wastewater Treatment Facility containing pollutant concentrations exceeding limitations in the General Permit, in violation of Part 3 of the General Permit and the CWA.
29. The TMWC did not notify the EPA by telephone within 24 hours and/or submit a written notice of noncompliance within five days of effluent limit exceedances, in violation of Part 5.8 of the General Permit and the CWA.

ORDER

30. Effective immediately, the TMWC shall comply with all current and future permit

requirements applicable to the Browning Lagoon Wastewater Treatment Facility.

31. Within 30 days of the effective date of this Consent Order, the TMWC shall submit to EPA a plan and schedule to address the effluent limitation exceedances identified in paragraphs 22 through 26 and to comply with the effluent limitations in Part 3 of the General Permit. The plan and schedule must include a timeline with interim milestones and a final deadline to return to compliance.
32. TMWC and EPA understand that funding for any construction, repairs, or rehabilitation of the Browning Lagoon Wastewater Treatment Facility may be available under annual appropriations bills funding agencies including the Bureau of Indian Affairs or the Indian Health Service or under the Bipartisan Infrastructure bill that passed the United States Senate on August 10, 2021, which also provides significant appropriations for the purpose of improving water infrastructure in Indian country. TMWC will account for the timing of the availability of funding in its plan and schedule, and EPA will account for the timing of the availability of funding in its comments on the submitted plan and schedule.
33. EPA will review the plan and schedule submitted by the TMWC and may provide comments. EPA will convey its comments to the TMWC in writing, which may include modifications to the plan or schedule.
34. The submitted plan and schedule, with any EPA comments incorporated, is enforceable as part of this Consent Order.
35. All information and notices submitted by TMWC to the EPA as required by this Consent Order shall be submitted to:

Jessica Duggan (ENF-W-NW)
Duggan.jessica@epa.gov

U.S. EPA Region 8

36. All information submitted by TMWC to the EPA as required by this Consent Order shall include the following certification statement, signed, and dated by a duly authorized representative of the TMWC:

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.

GENERAL PROVISIONS

37. The TMWC shall fully implement each item of this Consent Order. The TMWC's failure to implement all requirements of this Consent Order in the manner and time period required shall be deemed a violation of this Consent Order and may subject the TMWC to penalties as provided under section 309 of the CWA, 33 U.S.C. § 1319.
38. This Consent Order does not constitute a waiver, suspension, or modification of any requirement of the CWA, the General Permit, or any individual discharge permit. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.
39. This Consent Order may be amended or modified by written agreement of the EPA and the TMWC.
40. This Consent Order shall be effective upon receipt of the fully-executed copy by the TMWC.

41. This Consent Order shall terminate upon EPA determining successful completion of the requirements agreed to in the Consent Order or a determination by EPA that a subsequent enforcement action is necessary and supersedes this Consent Order.

IT IS SO AGREED AND ORDERED:

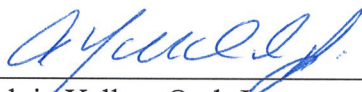
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,**
Complainant.

Date: _____

Suzanne J. Bohan,
Director
Enforcement and Compliance Assurance Division

TWO MEDICINE WATER COMPANY,
Respondent.

Date: 11/23/2021



Alvin Yellow Owl, Jr.,
Director