

**BOGUE &
BOGUE, LLP**
LAW OFFICES

Cheryl Laurenz-Bogue
Eric H. Bogue

Respond to Faith Office

April 24, 2012

Tina Artemis
Regional Hearing Clerk (SRC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: In Re City of Dupree, NPDES Permit No. SDG589116; Docket No. CWA-08-2011-0040
Respondent's Motion for To Reschedule the Second Prehearing Conference and for an
Extension or Stay of Time for Respondent to File Prehearing Information Exchange

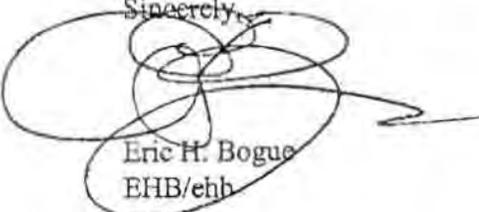
Dear Ms. Artemis:

Enclosed please find for filing in your office the original Respondent's Motion for To Reschedule the Second Prehearing Conference and for an Extension or Stay of Time for Respondent to File Prehearing Information Exchange and a Certificate of Service on the above referenced matter. These same documents have also been sent via electronic mail to your office at artemis.tina@epa.gov.

I have also enclosed a conforming copy of each document for your convenience to return to my office in the enclosed SASE. I have served a copy of these documents and this letter upon Amy Swanson, Enforcement Attorney for the EPA by both regular mail and via electronic mail at swanson.amy@epamail.epa.gov.

Thank you in advance for your time and consideration on this matter. If you have any questions or concerns, please don't hesitate to contact me at your earliest convenience.

Sincerely,



Eric H. Bogue
EHB/ehb

eh:

cc: Client

DUPREE

Ziebach County Courthouse
200 Main St.
P.O. Box 400
Dupree, SD 57623-0400

605.365.5171 (tele)
605.365.5717 (fax)

FAITH

Butler Insurance Building, Suite 2
104 West 1st St.
P.O. Box 250
Faith, SD 57626-0250

605.967.2529 (tele)
605.967.2527 (fax)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
RECEIVED 04 APR 2012

In the Matter of:)	Docket No. CWA-08-2011-0040
)	
)	
The City of Dupree, South Dakota)	RESPONDENT'S MOTION TO
Dupree, South Dakota)	RESCHEDULE SECOND
NPDES Permit No. SDG589116)	PREHEARING CONFERENCE AND
)	FOR EXTENSION OR STAY OF TIME
)	FOR RESPONDENT TO FILE
)	PREHEARING INFORMATION
Respondent)	EXCHANGE

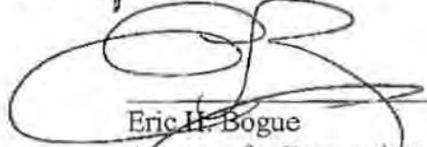
Comes now Eric H. Bogue, Attorney for Respondent City of Dupree, and pursuant to 40 CFR Part 22, §22.7 hereby makes and files this Motion for To Reschedule the Second Prehearing Conference and for an Extension or Stay of Time for Respondent to File Prehearing Information Exchange in the above entitled matter.

Pursuant to the Order to File Prehearing Information Exchange dated the 12th day of January, 2012, Respondent's Prehearing Exchange was due on or before the 29th day of March, 2012, and Respondent acknowledges that such exchange has not been made. As set forth on the attached Affidavit in Support of Respondent's Motion To Reschedule the Second Prehearing Conference and for an Extension or Stay of Time for Respondent to File Prehearing Information Exchange, the City of Dupree has gone through substantial turnover in elected, appointed, and employed personnel within the past seven (7) months. The officials and personnel in office or employed when the events alleged to have occurred are no longer with Respondent. Furthermore, the records pertaining to the subject time period also appear to be misfiled, missing, or are otherwise unavailable. The Respondent is attempting, together with their recently retained engineering firm, Broz Engineering, Inc., to locate and/or recreate such records in order to

comply with above referenced Order. However, the project engineer, Chancey E. Shrake, is away from his office for his duties with the South Dakota National Guard until May 14, 2012.

The undersigned has attempted to contact Amy Swanson, Senior Attorney, Legal Enforcement Program, for the U.S. Environmental Protection Agency, Region 8, regarding such rescheduling and extension/stay and has been notified that she does not have any objection to such request. Respondent respectfully asserts that it has shown good cause pursuant to 40 CFR §22.7(b) for such rescheduling and extension/stay of time and with such an extension/stay Respondent will not have "failed" to exchange information and therefore 40 CFR §22.19(g) is not applicable. Therefore, with agreement from the EPA and for good cause shown, Respondent respectfully requests that the Second Prehearing Conference be rescheduled until after Respondent's engineer has returned from National Guard training and for an Extension or Stay of Time for Respondent to File Prehearing Information Exchange in the above entitled matter.

Respectfully submitted this 24th day of April, 2012.



Eric H. Bogue
Attorney for Respondent
P.O. Box 250
Faith, SD 57626
(605) 967-2529

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

In the Matter of:)
)
The City of Dupree, South Dakota)
Dupree, South Dakota)
NPDES Permit No. SDG589116)
)
Respondent)

Docket No. CWA-08-2011-0040

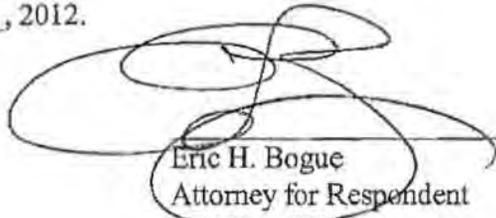
CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Respondent's Motion for To Reschedule the Second Prehearing Conference and for an Extension or Stay of Time for Respondent to File Prehearing Information Exchange in the above entitled matter was served upon the following by electronic mail and by first-class mail, postage pre-paid:

Amy Swanson
Enforcement Attorney (8ENF-L)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
swanson.amy@epamail.epa.gov

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
artemis.tina@epa.gov

on this 20th day of April, 2012.

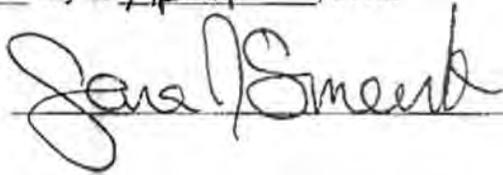

Eric H. Bogue
Attorney for Respondent
P.O. Box 250
Faith, South Dakota 57626
(605) 967-2529

4. That Ian Pistulka was the Maintenance Manager for the City of Dupree during the applicable time period when the events alleged in the above entitled matter are alleged to have occurred.
5. That Ian Pistulka terminated his employment with the City of Dupree on or about the 8th day of November, 2011.
6. That Jesse Donovan was the City Finance Officer and custodian of municipal records during the applicable time period when the events alleged in the above entitled matter are alleged to have occurred.
7. That Jesse Donovan terminated her employment with the City of Dupree on or about the 24th day of February, 2012.
8. That the City of Dupree retained Brosz Engineering, Inc., of P.O. Box 23, Pierre, South Dakota, on or about the 6th day of February, 2012, to assist the City with the required Prehearing Information Exchange.
9. That Brosz Engineering, Inc., assigned Chancey E. Shrake, PE, to work with the City of Dupree on compiling and preparing reports and other documentation as required.
10. That Maurice Lemke was appointed as Finance Officer on or about the 28th day of February, 2012.
11. That City of Dupree has been informed by Brosz Engineering, Inc. that Chancey E. Shrake, PE, has deployed with his South Dakota National Guard Unit for mandatory training and will not return to his office until the 14th day of May, 2012.

12. That your Affiant is aware that since the departures of both Ian Pistulka and Jesse Donovan, the City elected and appointed officials have found items misfiled and had severe difficulty locating other municipal records, including without limitation the records dealing with the events alleged to have occurred in the above entitled matter.


Raymond J. Leek, Mayor, City of Dupree

Subscribed and sworn to before me this 24 day of April, 2012.



Notary Public - South Dakota
My Commission Expires: 7-14-2015
(SEAL)

