



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

JUN 22 2011

Ref: 8ENF-L

CERTIFIED MAIL: 7009-3410-0000-2593-7170
RETURN RECEIPT REQUESTED

Mr. Dale Little Soldier, President
Lake Sakakawea & Associates, LLC
2500 9th Avenue NW Apartment 1
Mandan, ND 58554-1526

Re: Administrative Complaint and Notice of Opportunity for Hearing under Section 309(g) of the Clean Water Act

Dear Mr. Little Soldier:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Administrative Complaint and Notice of Opportunity for Hearing (Complaint) issued to Lake Sakakawea & Associates, LLC, under § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g), for alleged violations of the Act and the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities at the construction site formerly selected for the Eagle Catch Casino and Resort within the exterior boundaries of the Fort Berthold Indian Reservation.

The Complaint proposes the assessment of administrative penalties against Lake Sakakawea & Associates, LLC, in the amount of \$84,000. This proposed penalty amount is based on consideration of the applicable statutory penalty factors in § 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violation(s); the violator's ability to pay; any history of prior violations; the degree of culpability; any economic benefit to the violator resulting from the violations; and other factors as justice may require.

Lake Sakakawea & Associates, LLC, has the right to a hearing to contest the factual allegations in the Complaint. A copy of the procedures for such a hearing is enclosed for review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. **If Lake Sakakawea & Associates, LLC, wishes to contest the allegations or the penalties proposed in the Complaint, it must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:**

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

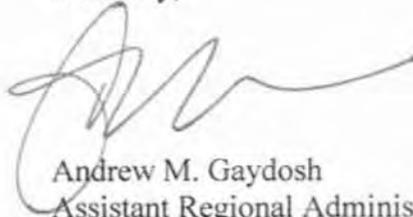
If Lake Sakakawea & Associates, LLC, does not file an answer by the applicable deadline, it may be found in default. A default judgment may impose the full penalty proposed in the Complaint.

Whether or not Lake Sakakawea & Associates, LLC, requests a hearing, it may confer informally with EPA concerning the alleged violations or the proposed penalty amount. However, please note that a request for an informal conference does **not** extend the thirty (30) day period for filing an answer and/or requesting a hearing. Lake Sakakawea & Associates, LLC, has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but this is not required.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, relating to the SBREFA, outlining compliance assistance resources available to small businesses and small governments in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Act.

If Lake Sakakawea & Associates, LLC, has any questions regarding the Complaint, 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,



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

Enclosures

cc: Dave Glatt, NDDH Environmental Health Chief
Lyle Latimer, Mercer County Board of Commissioners
Tex Hall, Three Affiliated Tribes Chairman
Joe Gilles, Three Affiliated Tribes Environmental Director
Tina Artemis, EPA Region 8 Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 JUN 22 AM 9:05

IN THE MATTER OF:)	Docket No. CWA-08-2011-0017
)	
Lake Sakakawea & Associates, LLC)	ADMINISTRATIVE COMPLAINT
2500 9 th Avenue NW Apartment 1)	AND NOTICE OF OPPORTUNITY
Mandan, ND 58554-1526,)	FOR HEARING
)	
Former Eagle Catch Casino Site,)	Proceeding to assess Class II penalty under
)	Section 309(g) of the Clean Water Act, 33
Respondent.)	U.S.C. § 1319(g)
)	

FILED
EPA REGION VIII
HEARING CLERK

LEGAL AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to the Clean Water Act (Act) § 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to make findings and to assess civil penalties for violations of § 301 of the Act, 33 U.S.C. § 1311. This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which accompanies this Complaint. The undersigned EPA official has been properly delegated the authority to issue this Complaint.

STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except in compliance with a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

3. Section 402 of the Act, 33 U.S.C. § 1342, establishes a NPDES program, under which EPA and, upon receiving authorization from EPA, states may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

4. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a program under which NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.

5. Each person discharging storm water associated with industrial activity must seek and obtain authorization to do so under either an individual NPDES permit or a promulgated NPDES general permit. 40 C.F.R. § 122.26(c); §§ 301(a), 308, and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1318, and 1342(p).

6. Effective July 1, 2003 (and modified January 21, 2005), EPA issued a NPDES General Permit for Stormwater Discharges from Construction Activities (Permit), authorizing discharges of storm water associated with large and small construction activities that result in a total land disturbance of equal to or greater than one acre, where those discharges enter surface waters of the United States, if done in compliance with the conditions of the permit. The Permit has been in effect at all times relevant to this action.

7. Appendix A of the Permit and 40 C.F.R. § 122.26(b)(14)(x) defines “large construction activity” to include clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than five acres.

8. Part 2 of the Permit provides that operators within the meaning of Appendix A must submit a complete and accurate Notice of Intent (NOI) for authorization to discharge.
9. Part 3.1 of the Permit, Storm Water Pollution Prevention Plan (SWPPP) Framework, provides in subpart A that a SWPPP must be prepared prior to submitting an NOI, and further provides that at least one SWPPP prepared in accordance with good engineering practices must be developed for each construction project covered by the Permit.
10. Part 3.1.B of the Permit states that the SWPPP must 1) identify all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site; 2) describe practices to be used to reduce pollutants in storm water discharges from the construction site; and 3) assure compliance with the terms and conditions of the Permit.
11. Part 3.1.D of the Permit provides that the SWPPP must be implemented as written from commencement of construction activity until final stabilization is complete.
12. Part 3.4 of the Permit, Controls to Reduce Pollutants, provides in subpart A that the SWPPP must include a description of all pollution control measures (otherwise known as Best Management Practices (BMPs)) that will be implemented as part of the construction activity to control pollutants in storm water discharges. For each major construction activity identified in the project description, the SWPPP must clearly describe appropriate control measures, the general sequence during the construction process in which the measures will be implemented, and which operator is responsible for the control measure's implementation.
13. Part 3.4.B of the Permit provides that the SWPPP must include a description of interim

and permanent stabilization practices for the site, including a schedule of when the practices will be implemented.

14. Part 3.6 of the Permit, Maintenance of Controls, states in part, that A) all erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If site inspections required by Subpart 3.10 identify BMPs that are not operating effectively, maintenance must be performed as soon as possible; B) if existing BMPs need to be modified or if additional BMPs are necessary for any reason, implementation must be completed before the next storm event whenever practicable; and C) and sediment from sediment traps or sedimentation ponds must be removed when design capacity has been reduced by 50 percent.

15. Part 3.10 of the Permit, Inspections, provides in subpart A that inspections must be conducted in accordance with one of two schedules provided, and specified in the SWPPP. An inspection report must be completed for each inspection including, at a minimum, the criteria set forth in subpart G, e.g. the location of BMPs that need to be maintained; the location of BMPs that failed to operate as designed or provide inadequate for a particular location; and the location of where additional BMPs are needed that did not exist at the time of inspection.

16. Part 3.11 of the Permit, Maintaining an Updated Plan, requires that the SWPPP, including the site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants to waters of the United States that has not been previously addressed in the SWPPP.

Subpart C further provides that the SWPPP must be modified as necessary to include additional

or modified BMPs designed to correct problems identified.

17. Part 3.13 of the Permit, Management Practices, provides that all control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. Subpart B provides if sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts. Subpart D provides that stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after construction activity in that portion of the site has temporarily or permanently ceased.

18. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of a Class II civil penalty of up to \$11,000 per day per violation of § 301 of the Act, 33 U.S.C. § 1311, and per day per violation of any condition or limitation in a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342, for violations occurring from March 15, 2004, through January 12, 2009, and up to \$16,000 per day for each day after January 12, 2009, during which a violation continues. For violations from March 15, 2004, through January 12, 2009, the maximum total penalty is \$157,500. For violations after January 12, 2009, the maximum is \$177,500. These amounts have been adjusted for inflation by 40 C.F.R. Part 19.

GENERAL ALLEGATIONS

19. Respondent Lake Sakakawea & Associates, LLC (Respondent) is and was at all times relevant to this action a North Dakota limited liability company doing business within the State of North Dakota (State).

20. Respondent is a "person" within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and therefore subject to the requirements of the Act or regulations.
21. At all times relevant to this action, Respondent engaged in construction activities at the Eagle Catch Casino & Resort Site (the Site) development on a 25 acre Indian Allotment held by Dale Little Soldier located in Section 17, Township 146 North, Range 88 West, Mercer Country, North Dakota, within the exterior boundaries of the Fort Berthold Indian Reservation.
22. Respondent engaged in an "industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14).
23. On October 12, 2007, Respondent submitted to the North Dakota Department of Health (NDDH) NPDES Program and EPA a copy of a SWPPP for the Site.
24. On December 21, 2007, Respondent submitted an NOI to the EPA for construction requesting authorization to discharge storm water at the Site pursuant to the Permit.
25. Coverage for the Site under the Permit (No. NDR10A581) was obtained on December 28, 2007.
26. The runoff and drainage from Respondent's facility is "storm water" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).
27. Storm water contains "pollutants" as defined by the Act. 33 U.S.C. § 1362(6).
28. The storm water discharge from the Site is a "discharge of a pollutant" as defined in § 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
29. The Site constitutes a "point source" within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

30. The receiving water for the Site's storm water, snow melt, surface drainage and run off is Lake Sakakawea.

31. Lake Sakakawea is a navigable water and a water of the U.S. as defined by the Act and EPA regulations, respectively. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

32. Respondent commenced construction activities at the Site in the spring of 2008. Specifically, Respondent commenced Phase I of the planned development project including, but not limited to, site work and road construction consisting of clearing, grading, and disturbance.

33. Respondent's construction activities at the Site resulted in the disturbance of approximately 12 acres of land.

34. Construction activities at the Site ceased in the fall of 2008 prior to completion of Phase I of construction (site work, road construction, lagoon construction, and related items).

35. On June 24, 2009, an authorized representative of the U.S. Army Corps of Engineers (Corps) inspected the Site and observed, among other things, the following:

- a. no erosion control measures;
- b. erosion around the perimeter of the disturbed area;
- c. growth of noxious weeds;
- d. no topsoil, vegetation or reseeded; and
- e. unstabilized site conditions.

36. On September 29, 2009, NDDH Division of Water Quality conveyed to EPA complaints regarding the Site expressed to the Mercer County Commission including extensive erosion and growth of noxious weeds resulting from the removal of top soil potentially threatening the Site,

surrounding slopes, and Lake Sakakawea.

37. On February 1, 2010, EPA issued a Request for Information (Request) to Respondent pursuant to § 308 of the Act, 33 U.S.C. § 1318. Among other things, the request required the Respondent to provide EPA copies of the SWPPP, description and site map of BMPs installed at the Site, and all storm water self-inspections conducted at the Site. Alternatively, the Respondent was requested to provide the dates of the self-inspections if the reports were not available.

38. EPA received a response to the Request (response) on behalf of Respondent, dated July 15, 2010, stating that it could not find certain information including, but not limited to, the self-inspection dates and corresponding reports.

39. The response contained a SWPPP which failed to meet the following Permit requirements: identification of all construction site operators and their area of control, a description of interim stabilization practices, post authorization records, a description of non-stormwater discharges, and documentation of permanent eligibility related to Endangered Species.

40. The response contained a SWPPP which described and located BMPs which were not installed at the Site as observed by the Mercer County Commissioners and/or the Corps.

41. Pursuant to § 309(g) of the Act, EPA has consulted with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation, NDDH, and Mercer County Commissioners regarding assessment of this administrative penalty by issuing a consultation letter and request for comment pre-filing and/or furnishing a copy of this Complaint.

COUNT 1
(Inadequate BMPs)

42. Paragraphs 1 – 41 are incorporated herein.
43. Respondent failed to properly select, operate, and maintain BMPs as required by Parts 3.6 and 3.13 of the Permit.
44. Respondent failed to temporarily or permanently stabilize the site as required by Part 3.13 of the Permit.
45. Respondent's failure to comply with the terms and conditions of Parts 3.6 and 3.13 of the Permit constitute violations of the Permit and the Act.

COUNT 2
(Failure to Conduct Site Inspections and Prepare Reports)

46. Paragraphs 1 – 45 are incorporated herein.
47. From the time construction activity began to the present, Respondent failed to conduct Site inspections, prepare inspection reports, and retain inspection reports as part of the SWPPP as required by Part 3.10 of the Permit.
48. Respondent's failures to comply with the terms and conditions of Part 3.10 of the Permit constitute violations of the Permit and the Act.

COUNT 3
(Inadequate SWPPP)

49. Paragraphs 1 – 48 are incorporated herein.
50. Respondent failed to develop an adequate SWPPP as required by Parts 3.1 and 3.4 of the Permit.
51. Respondent failed to amend the SWPPP as required by Part 3.11 of the Permit.

52. Respondent's failures to comply with the terms and conditions of Parts 3.1, 3.3. and 3.11 of the Permit constitute violations of the Permit and the Act.

PROPOSED CIVIL PENALTY

53. Based on the foregoing findings, and pursuant to the Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), and 40 C.F.R. § 19.4, the Complainant proposes that the Administrator issue a Final Order assessing civil administrative penalties in the amount of **\$84,000** for violations of § 301 of the Act, 33 U.S.C. § 1311, and for violations of a condition or limitation of a permit issued under § 402 of the Act, 33 U.S.C. § 1342. The Complainant bases this proposal after considering the applicable penalty factors in § 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3), requiring EPA to take into account the following factors in assessing a civil administrative penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.

Nature, Circumstances, Extent, and Gravity of Violations

As mentioned above, Mercer County Commissioners and the Army Corps of Engineers observed excessive erosion from the Site to the Lake. BMPs that would have minimized sediment discharges were missing throughout most of the Site. Had the Respondent complied with the Permit and implemented effective BMPs, it would have controlled its discharges and minimized off-site sediment run-off threatening surrounding slopes and Lake Sakakawea.

Storm water discharges from construction sites can severely compromise the integrity of our nation's waters. High sediment loads can cause siltation, which EPA found in 1998 to be the largest cause of impaired water quality in rivers and the third largest cause of impaired water quality in lakes. Other pollutants can be absorbed into fine sediment, causing nutrients, especially phosphorus, metals, and organic compounds, to move into aquatic ecosystems. Discharges from construction sites have been identified as a source of pollution in 6 percent of impaired rivers; 11 percent of impaired lakes, ponds, and reservoirs; and 11 percent of impaired estuaries. Sediment can fill lakes and reservoirs and clog stream channels, with effects extending

far downstream of the discharge. EPA has found that erosion rates from construction sites are much greater than from almost any other land use. Suspended sediment concentrations from construction sites have been found to be many times the concentrations from developed urban areas. Excess sediment is associated with increased turbidity, with reduced light penetration in the water column, with long-term habitat destruction, and with increased difficulty in filtering drinking water. See 64 Fed. Reg. 68722, 68728-68731 (Dec. 8, 1999) for more information on how discharges from construction sites cause water pollution.

EPA and states with authorized NPDES programs rely on the permit program to implement the controls needed to prevent water pollution. The Respondent's failure to properly comply with the Permit and SWPPP jeopardizes the integrity of EPA's and NDDH's programs to control storm water pollution.

Prior Compliance History

This complaint is the first enforcement action EPA Region 8 has issued to the Respondent regarding noncompliance with the storm water requirements.

Degree of Culpability

EPA's storm water program has been in place since 1990. The Respondent should have been aware of the applicable storm water requirements because prior to commencing with the development project, Respondent hired a professional engineering firm as a project consultant to prepare the specifications and proposal for site work, road construction, lagoon construction and related items; and otherwise provide technical assistance.

In 1990, EPA promulgated Phase I of its storm water program. (55 Fed. Reg. 47990-48091, November 16, 1990.) Phase I required NPDES permit authorization for storm water discharges from construction activity disturbing five or more acres of land, either by itself or in conjunction with other parts of a common development. (55 Fed. Reg. at 48066.) In 1999, EPA extended this requirement to storm water discharges from construction activity disturbing between 1 and 5 acres of land. (64 Fed. Reg. 68722, 68839, December 9, 1999.)

NDDH has conducted numerous training and outreach activities over the past several years to increase the regulated community's awareness of storm water control requirements. Since 2002, these have included at least 7 presentations to contractors and construction engineers on permit compliance and sediment/erosion control.

Therefore, the Respondent should have been fully aware of its responsibility to meet the requirements related to storm water control.

Economic Benefit

The Respondent received an economic benefit from its failure to comply with the requirements in the storm water discharge permit. It benefited by not spending the required funds to install and maintain all necessary BMPs (e.g., storm inlet protection, straw waddles, silt fence), temporarily and/or permanently stabilize the Site in a timely manner, inspect the construction site, and develop and maintain a complete SWPPP.

Ability to Pay

EPA did not reduce the proposed penalty due to this factor, but it will consider any information the Respondent may present regarding its ability to pay the penalty proposed in this Complaint.

Other Matters that Justice may Require

EPA is making no adjustments regarding this factor at this time.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in this matter. If Respondent (1) contests the appropriateness of the proposed penalty; or (2) asserts that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. The Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts Respondent disputes; (4) state the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

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

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6906

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE THIRTY (30) CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If the Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. No later than thirty (30) days after the effective date of the Final Order, the payment shall be made by remitting a cashier's or certified check for the amount, including the name and docket number of the case, payable to the : "**Environmental Protection Agency,**" to:

**US checks by regular
US postal service mail:**

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
Or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency "

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check or wire transfer shall be simultaneously sent to:

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

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

SETTLEMENT CONFERENCE

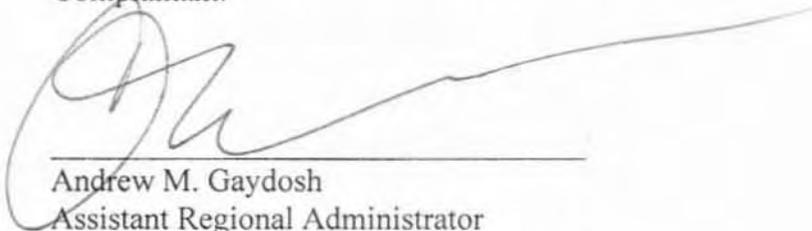
The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Senior Enforcement Attorney Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

PUBLIC NOTICE

As required by §309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

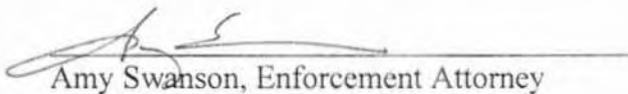
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: 6/22/2011



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

Date: 6/21/2011



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 Complaint and Notice of Opportunity for Hearing** 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 hand-carried to the following by the undersigned EPA representative:

Mr. Dale Little Soldier, President
Lake Sakakawea & Associates, LLC
2500 9th Avenue NW Apartment 1
Mandan, ND 58554-1526

Date: 6/22/2011

By: Judith M. McTernan



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators

(www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners



U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center
(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act
(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers
(www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.
(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse
(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline
(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information
(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.
(1-202-554-1404)

Wetlands Helpline
(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman
(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage
(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy
(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy
(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

§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.

1st Page only
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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.
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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.
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Subpart E—Initial Decision and Motion to Reopen a Hearing

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