

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8

2012 APR -6 PM 3: 51

EPA REGION VIII

In the Matter of ) Docket No. CWA-08-2012-0006
Oglala Sioux Tribe Water and Sewer Company ) AMENDED FINDINGS OF
Pine Ridge, South Dakota ) VIOLATION AND
NPDES Permit No. SDG589507 ) ORDER FOR COMPLIANCE
Respondent ) Proceedings under Section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

STATUTORY AUTHORITY

The following Amended Findings of Violation and Order for Compliance (Amended Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of, inter alia, sections 301 or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. This authority has been properly delegated to the undersigned Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. This Amended Order supersedes the order originally filed by EPA in this matter on February 7, 2012. The Amended Order is based on input provided by the Oglala Sioux Tribe and Indian Health Services clarifying certain facts alleged in the Findings section of the order.

FINDINGS OF FACT AND LAW

- 1. The Oglala Sioux Tribe Water and Sewer Company ("Respondent" or "OSTWS") is a tribal organization authorized under the laws of the federally recognized Oglala Sioux Tribe (Tribe) to provide drinking water and wastewater treatment services to the communities located within the exterior boundaries of the Pine Ridge Indian Reservation.

2. Respondent is an authorized tribal organization and therefore a “municipality” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2.
3. 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.
4. 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.
5. Effective September 14, 2010, EPA issued a NPDES General Permit for Wastewater Lagoons in Indian Country, authorizing, in part, operators of wastewater treatment lagoons within the Pine Ridge Indian Reservation to discharge to waters of the U.S. in accordance with the conditions set forth in the Permit.
6. Effective May 19, 2011, EPA authorized the Pine Ridge Wastewater Facility under Permit no. SDG589507.
7. Respondent owns and/or operates a Category 2 (permission required to discharge) wastewater treatment facility (facility) that includes a sewer collection and conveyance system, a lift station, and a three-cell wastewater treatment lagoon.
8. The facility serves the community of Pine Ridge, including approximately 900 homes, Tribal offices, Bureau of Indian Affairs offices, an Indian Health Service (IHS) hospital, a Tribal college, and a number of other businesses and private enterprises.
9. Respondent on behalf of the Tribe owns, manages, and/or controls the facility.
10. The facility is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).

11. The facility discharges into White Clay Creek, which flows into the White River before entering the Missouri River. The Missouri River and its tributaries constitute “waters of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, navigable waters within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
12. Section 301(a) of the Act, 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 Act, including section 402 of the Act, 33 U.S.C. § 1342.
13. Wastewater is a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
14. Respondent is subject to the requirements of the Act, the Permit, and EPA’s regulations implementing the Act.
15. Part 5.1 of the Permit states there shall be no discharge except in accordance with the Permit’s bypass provisions. If an unauthorized release is discovered or expected to occur, the permittee shall take the appropriate measures to minimize the discharge of pollutants.
16. Part 6.8.1 of the Permit requires Respondent to report any noncompliance which may endanger health or the environment to EPA and the Tribe within 24 hours of becoming aware of the circumstance.
17. Part 6.8.2 of the Permit requires Respondent to report, in part, any unauthorized discharge by telephone to EPA and the Tribe the first workday following the day of becoming aware of the circumstance.
18. Part 6.8.3 of the Permit requires Respondent within five days of becoming aware of the circumstances to provide EPA and the Tribe with a written submission containing (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.

19. Part 7.5 of the Permit requires Respondent to properly operate and maintain at all times 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 permit. The Permit extends the operation and maintenance requirement to back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the permit's conditions. At a minimum, Respondent is required to operate one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

#### **FINDINGS OF VIOLATION**

20. On July 13, 2011, EPA was informed by the OST Environmental Program that the facility was experiencing a sanitary sewer overflow (SSO) from the manhole upstream of the lift station, resulting in surface contamination of untreated sanitary sewage. The discharge resulted from the lift station pumps failing in April 2011 and subsequent actions by Respondent between April and August 2011 to pump effluent from the first manhole to a pipe using a trash pump for sewage to gravity flow to the old lagoon. Photos of the discharge from this manhole were provided.

21. The SSO occurred when the existing surge pond, used to retain overflows, reached capacity and liquids in the piping overflowed the manhole. Because the surge pond is unfenced and unmarked, the Tribe was concerned that children might play in the pond.
22. As of August 24, 2011, EPA was notified that the SSO was overflowing the manhole, entering wetlands and discharging directly into White Clay Creek. Photos and a video of the SSO from this manhole were provided.
23. The SSO posed a significant threat to human health by potentially exposing nearby residents and users of White Clay Creek to harmful fecal coliform bacteria and other pathogens present in feces. Access was not restricted to the surge pond.
24. EPA deployed an On Scene Coordinator and contractors on August 25, 2011, at the Tribe's request to assist with repairs to the lift station pumping system, removal or treatment of contaminated soils around the overflowing manhole, and water quality sampling in White Clay Creek.
25. The facility discharged untreated wastewater from unauthorized outfalls in violation of Part 5.1 of the Permit beginning on or before July 13 to August 31, 2011.
26. Respondent failed to report the unauthorized discharge to the EPA and the Tribe within 24 hours of becoming aware of the circumstances, in violation of Part 6.8.1 of the Permit.
27. Respondent failed to report the unauthorized discharge to the EPA and the Tribe by the first workday following the day of becoming aware of the circumstance, in violation of Part 6.8.2 of the Permit.
28. A noncompliance report was not received within five days of becoming aware of the SSO, in violation of Part 6.8.3 of the Permit.

29. Respondent failed to regularly operate and maintain the facility, and operate properly the temporary back-up pump, in violation of Part 7.5 of the Permit.

**ORDER**

30. The Respondent submitted a written notice of intent to comply to EPA on February 23, 2012, within 10 days of receipt of the original order.
31. Respondent shall comply with all requirements of the Permit including, but not limited to, Parts 5.1 (discharge only in accordance with Permit bypass provisions); 5.3.1 (conduct weekly self-inspections); 5.3.2 (properly document weekly self-inspection reports); 6.8.1 (report noncompliance which may endanger health or the environment within 24 hours to EPA and Tribe); 6.8.2 (report any unauthorized discharge by telephone the first workday following the incident to EPA and the Tribe); 6.8.3 (submit a written description of the unauthorized discharge within five days to EPA and the Tribe); and 7.5 (properly operate and maintain all facilities and systems of control).
32. No later than 30 days after receiving this Amended Order, Respondent shall submit to EPA and the Tribe written verification that the SSO has been permanently repaired; repairs completed to the lift station, including pumps and electric motors; and contaminated soils, wetlands, or White Clay Creek remediated. The written verification shall be accompanied by invoices, photographs and other information documenting that the work has been successfully completed.
33. No later than 30 days after receiving this Amended Order, Respondent shall submit to EPA a staffing and resource plan to address both the facility's regular operational and emergency needs, including backup or auxiliary facilities, in the event of future lift station failures.

34. No later than 60 days after receiving this Amended Order, Respondent shall develop and submit to EPA for review and approval a draft management and operation plan for the facility. The Respondent may seek assistance from a contractor, consultant, or federal agency other than EPA to draft the plan but remains solely liable for complying with this requirement. The plan, at a minimum, shall include the following elements to prevent SSOs in the future:

(1) Overflow Emergency Response Plan. An overflow emergency response plan to protect public health from overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the permit. At a minimum the emergency response plan must include mechanisms to:

- (a) Ensure that Respondent is aware (to the greatest extent possible) of all overflows from portions of the collection system and any unanticipated bypass or upset that exceeds any effluent limitation in the permit;
- (b) Ensure appropriate responses including assurance that reports of an overflow or of an unanticipated bypass or upset that exceeds any effluent limitation in the permit are immediately dispatched to appropriate personnel for investigation and response and, further, that all potentially impacted surface water users and groundwater under the direct influence of surface water users are notified;
- (c) Ensure that Respondent has appropriate back-up equipment, staff, and resources to respond to future situations where the primary system at the lift station fails;
- (d) Ensure appropriate personnel are aware of and follow the plan and are appropriately trained and have access to the information they need to operate the system.

(2) Measures and Activities. Respondent's management and operation plan must address the following elements, including identification of the person or position in its organization responsible for each element:

- (a) Provide adequate maintenance facilities and equipment;
- (b) Maintain a map of the collection system;
- (c) Conduct routine preventive operation and maintenance activities;
- (d) Assess the current dry and wet weather capacities of the collection system and treatment facilities;
- (e) Identify and prioritize structural deficiencies, and identify and implement short-term and long-term rehabilitation actions to address each deficiency;
- (f) Provide appropriate facility training on a regular basis;
- (g) Maintain equipment and replacement parts inventories including identification of critical replacement parts;
- (h) Develop a public education program or materials to present at local schools concerning what can and cannot be put in toilets.

- (3) Design and Performance Provisions. Respondent must establish:
- (a) Requirements and standards for the installation of new sewers, pumps and other appurtenances; and rehabilitation and repair projects;
  - (b) Procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects;
  - (c) List of all changes made or proposed to the facility to respond to future lift station failures.
- (4) Monitoring, Measurement, and Program Modifications. Respondent must:
- (a) Monitor the implementation and effectiveness of each element of its management and operation plan;
  - (b) Update program elements as appropriate based on monitoring or performance evaluations.
35. Within 30 days of receiving plan approval from EPA, with or without changes, Respondent shall submit a final management and operation plan to EPA and the Tribe, addressing EPA's changes and/or comments, if any.
36. All notices and reports to EPA required by this Amended Order shall be given to:
- Monia Ben-Khaled (8ENF-W-NP)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129
37. All notices and reports to the Tribe required by this Amended Order shall be given to:
- Suzy Mesteth, Acting Director  
Ogala Sioux Tribe Environmental Program  
P.O. Box 2008  
Pine Ridge, SD 57770
38. All reports and information required by this Amended 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.

39. Any failure to comply with the requirements of this Amended Order shall constitute a violation of said Amended Order and may subject Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.
40. This Amended 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.
41. Nothing in this Amended 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 law or regulation.
42. This Amended Order shall be effective upon receipt by Respondent.

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

Date: 4/4/2011



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

Date: 4/6/2012

  
\_\_\_\_\_  
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 Amended Administrative Order for Compliance 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 sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

David Pourier, Director  
OST Water and Sewer Company  
P.O. Box 1054  
Pine Ridge, SD 57770

Date: 4/6/2012

By: Dayle De Armb