

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)		
Two Medicine Water Company)		Docket No. CWA-08-2023-0003
PO Box 1529)		
Browning, MT 59417)		
Respondent.)		CONSENT AGREEMENT

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. Two Medicine Water Company (Respondent) owns and/or operates the Browning Lagoon Wastewater Treatment Facility (Browning Facility) and the Two Medicine Water Treatment Plant (Two Medicine WTP) located on the Blackfeet Indian Reservation of Montana (Reservation).
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 309 of the Clean Water Act (Act), 33 U.S.C. § 1319. The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. 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.
8. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program under which EPA may authorize discharges into navigable waters, subject to specific terms and conditions.

9. Wastewater, including backwash, is a “pollutant” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
10. Effective January 1, 2016, EPA issued the Region 8 NPDES General Permit for Wastewater Lagoons in Indian Country MTG589### (2016 Lagoon 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 2016 Lagoon General Permit. The Lagoon General Permit expired on December 31, 2020.
11. Effective April 1, 2022, EPA issued the NPDES General Permit for Wastewater Lagoons in Indian Country MTG589### (2022 Lagoons 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. The 2022 Lagoon General Permit expires on March 31, 2027.
12. Effective July 31, 2019, EPA issued the Region 8 NPDES General Permit for Wastewater Discharges Associated with Drinking Water Production in Indian Country MTDW##### (Drinking Water General Permit), authorizing, in part, operators of wastewater treatment systems associated with drinking water production located on the Reservation to discharge to water of the United States in accordance with the conditions set forth in the Drinking Water General Permit. The Drinking Water General Permit expires on June 30, 2024.
13. Permittees under the 2016 Lagoon General Permit, 2022 Lagoon General Permit or Drinking Water General Permit must comply with all conditions of the respective permit. 40 C.F.R. § 122.41(a).

IV. STIPULATED FACTS AND CONCLUSIONS OF LAW

14. The Blackfeet Tribe of the Blackfeet Indian Reservation of Montana (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 87 Fed. Reg. 4636, 4637 (January 28, 2022).
15. Respondent is an Indian tribal organization authorized under the laws of the Tribe.
16. Respondent 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.
17. Respondent 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.
18. Respondent provides wastewater treatment services and drinking water treatment services, on behalf of the Tribe, to the communities located within the exterior boundaries of the Reservation.
19. Respondent operates and maintains multiple wastewater treatment facilities and a drinking water facility on behalf of the Tribe throughout the Reservation.

Browning Facility

20. Since at least September 2017, Respondent has operated and maintained the Browning Facility.

21. The Browning Facility is a wastewater treatment facility consisting of a sanitary sewer collection system and wastewater treatment lagoons.
22. The Browning 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.
23. The Browning Facility discharges wastewater into an unnamed tributary of Willow Creek.
24. The unnamed tributary of Willow Creek flows into the Willow Creek, which flows into Cut Bank Creek, which flows into the Marias River, a tributary of the Missouri River.
25. 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).
26. On May 22, 2014, EPA issued Respondent permit coverage authorization for the Browning Facility under permit number MTG589006. This coverage began on May 22, 2014, expired on September 14, 2015, authorized discharge, and required monthly monitoring.
27. The Browning Facility was assigned reporting sub-category A - Monthly, and its coverage under the 2016 Lagoon General Permit required Respondent 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 occurred during the reporting period, “no discharge” was required to be reported. Lagoon General Permit Part 5.4.1.
28. The Browning Facility’s coverage under permit number MTG589006 required Respondent:
 - a. to keep the dikes mowed on a regular basis during the growing season or as needed (e.g., keep growth below 6" in height), Permit Part 6.5.5;
 - b. to promptly remove burrowing animals from the dikes and promptly repair damage to the dikes caused by burrowing animals, Permit Part 6.5.2 and 6.5.3; and
 - c. to inspect on at least a weekly basis and maintain records of the inspections, Permit Part 3.3.
29. On May 16, 2017, an EPA inspector and EPA contractor (Inspectors) conducted an inspection of the Browning Facility, during which the Inspectors had conversations with employees at the Browning Facility, made field observations, performed a document review, and reviewed information from the Integrated Compliance Information System (ICIS).
30. During the May 16, 2017, inspection at the Browning Facility, the Inspectors observed and gathered evidence of the following:
 - a. There was overgrown vegetation on the dikes surrounding each cell;
 - b. Animal burrows were present in the berms; and

- c. Weekly inspections were not being performed and recorded.
31. On July 5, 2018, EPA reissued Respondent coverage authorization under the Lagoon General Permit for the Browning Facility under permit number MTG589104. This coverage began on July 5, 2018, expires on December 31, 2020, authorizes discharges, and requires subcategory A/monthly monitoring.
 32. On September 3, 2019, EPA issued an Administrative Order on Consent against Respondent, which ordered Respondent to perform the actions listed in paragraphs 27 and 28, which the Respondent had not performed since EPA issued permit number MTG589104 on July 5, 2018.
 33. On November 23, 2020, Respondent submitted documentation to EPA that Respondent began inspecting the Browning Facility on a weekly basis and maintaining records of the inspections, pursuant to Part 3.3 of permit number MTG589104.
 34. On December 7, 2020, the EPA issued a letter providing notice that the Browning Facility will continue to be covered under the administratively continued 2016 Lagoons General Permit until a renewed Lagoons General Permit is effective.
 35. On May 25, 2021, Respondent submitted all missing DMRs and provided confirmation documentation to EPA.
 36. On November 29, 2021, EPA issued an Administrative Order on Consent against Respondent, which ordered Respondent to comply with the terms of the 2016 Lagoons General Permit and submit a plan and schedule to EPA to address effluent exceedances.
 37. On December 29, 2021, Respondent submitted to EPA a plan and schedule to address effluent exceedances.
 38. On March 18, 2022, the EPA issued an email to all covered facilities, with a copy of the application (Notice of Intent (NOI)) for coverage under the 2022 Lagoons General Permit, and a copy of the NOI submission instructions. The EPA email stated “the application period to reapply for coverage under the [2022 Lagoons General Permit] is April 1, 2022, through June 30, 2022. Failure to submit an NOI by the deadline may result in a gap in permit coverage”.
 39. Effective April 1, 2022, EPA issued the NPDES General Permit for Wastewater Lagoons in Indian Country MTG589### (2022 Lagoons 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.
 40. Respondent did not submit an NOI for the Browning Facility by June 30, 2022.
 41. On July 20, 2022, an EPA Inspector conducted an inspection of the Browning Facility, during which the Inspector had conversations with employees at the Browning Facility, made field observations, performed a document review, and reviewed information from the EPA’s Integrated Compliance Information System (ICIS).

42. During the July 20, 2022 inspection at the Browning Facility, the Inspector observed and gathered evidence of the following:
- a. The Browning Facility was discharging;
 - b. There was overgrown vegetation on portions of the dikes surrounding each cell;
 - c. Treatment and control equipment (UV disinfection unit and lagoon cell 1 aerators) were not being maintained;
 - d. The Browning Facility failed to monitor for:
 - i. Oil and grease during July, August, September, October, November, and December 2021;
 - ii. *E. coli* during August 2021;
 - iii. pH during September 2021;
 - iv. Temperature during September 2021; and
 - v. Total residual chlorine during October and November 2021.
 - e. Effluent limitation exceedances for:
 - i. Total residual chlorine daily maximum during August and September 2021;
 - ii. Total residual chlorine 30 day average during August and September 2021;
 - iii. Oil and grease during July, August, September, October, November, and December 2021; and
 - iv. Ammonia during July, August, September, October, November, and December 2021.
43. On November 7, 2022, Respondent submitted an NOI for the Browning Facility.

Two Medicine WTP

44. Respondent operates and maintains the Two Medicine WTP.
45. The Two Medicine WTP is a drinking water treatment facility.
46. The Two Medicine WTP 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.
47. The Two Medicine WTP discharges backwash into an unnamed tributary of the Two Medicine River.
48. The unnamed tributary of the Two Medicine River flows into the Two Medicine River, a tributary of the Marias River, which is a tributary of the Missouri River.
49. 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).

50. On December 10, 2012, EPA issued Respondent an individual NPDES permit for the Two Medicine WTP under permit number MT0030687. This permit coverage began on January 1, 2013, and expired on December 31, 2017. This coverage authorized the Two Medicine WTP to discharge.
51. Permit number MT0030687 required Respondent:
- a. to perform self-monitoring at the Two Medicine WTP, Part 1.3.2;
 - b. to inspect the Two Medicine WTP on at least a weekly basis and maintain records of the inspections, Part 1.3.3; and
 - c. to submit discharge monitoring reports (DMRs) on a monthly basis, Part 2.4.
52. Permit number MT0030687 identified effluent limitations for Outfall 001. The 30-day average total residual chlorine effluent limit was 0.011 mg/L. Monitoring results were required to be reported on DMRs and mailed to the EPA Region 8 and Blackfeet Environmental Office.
53. Based on the DMR data EPA received, Respondent exceeded the 30-day average total residual chlorine effluent limit 13 times between June 30, 2015, and August 31, 2016.
54. Based on the DMR data EPA received, Respondent failed to submit timely DMRs from September 1, 2016, to December 31, 2017
55. On May 16, 2017, the Inspectors conducted an inspection of the Two Medicine WTP, during which the Inspectors had conversations with employees, made field observations, and performed a document review.
56. During the May 16, 2017 inspection at the Two Medicine WTP, the Inspectors observed and gathered evidence of the following:
- a. The facility was discharging;
 - b. Self-monitoring was not being conducted as required by Part 1.3.2 of permit number MT0030687:
 - i. Total flow had not been monitored weekly as required by the permit. The flow measurement device was installed approximately one year prior to the inspection but had not been operational;
 - ii. pH had not been monitored using a grab sample as required by the permit;
 - iii. pH had been monitored on a monthly frequency rather than the weekly frequency required by the permit;
 - iv. Total residual chlorine had not been monitored using a grab sample as required by the permit;

- v. Total residual chlorine had been monitored on a monthly frequency rather than the daily frequency required by the permit;
 - c. Weekly inspections were not being performed and recorded as required by Part 1.3.3 of permit number MT0030687; and
 - d. Records were not being maintained as required by Part 2.7 of permit number MT0030687.
57. Respondent had a duty to reapply and submit a permit application at least 180 days before the expiration of Permit No. MT0030687 as required by Part 4.4 of the permit. Respondent did not submit a permit application to renew permit coverage.
58. The permit coverage under Permit No. MT0030687 expired on December 31, 2017.
59. From January 1, 2018, to December 10, 2020, Respondent operated and maintained the Two Medicine WTP without NPDES permit coverage.
60. From January 1, 2018, to December 10, 2020, Respondent discharged from the Two Medicine WTP without NPDES permit coverage.
61. On September 3, 2019, EPA issued an Administrative Order on Consent against Respondent, which ordered Respondent to cease the unpermitted discharge of pollutants from the Two Medicine WTP.
62. On October 8, 2020, Respondent submitted an NOI for coverage of the Two Medicine WTP under the Drinking Water General Permit.
63. On November 23, 2020, Respondent submitted documentation evidencing that it was conducting self-monitoring as required by Part 1.3.2 of permit number MT0030687.
64. On November 23, 2020, Respondent submitted documentation evidencing that it was performing and recording weekly inspections as required by Part 1.3.3 of permit number MT0030687.
65. On December 10, 2020, EPA issued permit number MTDW0003I to Respondent for the Two Medicine WTP.
66. On July 20, 2022, an EPA Inspector conducted an inspection of the Browning Facility, during which the Inspector had conversations with employees at the Browning Facility, made field observations, performed a document review, and reviewed information from the EPA's Integrated Compliance Information System (ICIS).
67. During the July 20, 2022 inspection at the Browning Facility, the Inspector observed and gathered evidence of the following:
- a. Respondent submitted five DMRs on February 20, 2022, after the January 28, 2022 deadline; and
 - b. Wastewater pond 2 contained a significant amount of vegetation growth on all edges and within the pond.

V. VIOLATIONS OF LAW

Browning Facility

68. From July 5, 2018, to April 30, 2021, Respondent failed to submit monthly discharge monitoring reports for the Browning Facility, in violation of Part 5.4.1 of the 2016 Lagoon General Permit and the CWA.
69. From March 1, 2019, to November 23, 2020, Respondent failed to inspect the Browning Facility on a weekly basis and maintain records of the inspections, in violation of Part 3.3 of the 2016 Lagoon General Permit and the CWA.
70. From July 5, 2018, to June 30, 2022, Respondent failed to mow vegetation on the dikes surrounding each cell and remove animal burrows from the berms at the Browning Facility, in violation of Part 6.5.5 of the 2016 Lagoon General Permit and the CWA.
71. Respondent failed to monitor for oil and grease during July, August, September, October, November, and December 2021; E. coli during August 2021; pH during September 2021; temperature during September 2021; and total residual chlorine during October and November 2021, in violation of Part 3.2 of the 2016 Lagoon General Permit and the CWA.
72. Respondent had e Effluent limitation exceedances for total residual chlorine daily maximum during August and September 2021; total residual chlorine 30 day average during August and September 2021; oil and grease during July, August, September, October, November, and December 2021; and ammonia during July, August, September, October, November, and December 2021, in violation of Part 3.1 of the 2016 Lagoon General Permit and the CWA.
73. From June 30, 2022, to present, Respondent discharged pollutants to waters of the United States without a permit, in violation of 33 U.S.C. § 1311.

Two Medicine WTP

74. From June 1, 2015, to May 16, 2017, Respondent failed to perform adequate self-monitoring as required by Part 1.3.2 of permit number MT0030687, and to maintain self-monitoring records as required by Part 2.7 of permit number MT0030687 at the Two Medicine WTP, in violation of permit number MT0030687 and the CWA.
75. From June 1, 2015, to May 16, 2017, Respondent failed to inspect the Two Medicine WTP filter backwash ponds on at least a weekly basis or create and maintain records of any inspections, in violation of Part 1.3.3 of permit number MT0030687 and the CWA.
76. From June 30, 2015, to August 31, 2016, Respondent exceeded the 30-day average total residual chlorine effluent limit 13 times at the Two Medicine WTP, in violation of permit number MT0030687 and the CWA.
77. From September 1, 2016, to December 31, 2017, Respondent failed to submit DMRs, in violation of Part 4.4 of permit number MT0030687 and the CWA.

78. From January 1, 2018, to December 8, 2020, Respondent discharged without a permit, in violation of CWA § 301(a), 33 U.S.C. § 1311(a).
79. From January 29, 2022, to February 27, 2022, Respondent failed to submit DMRs, in violation of Part 4.4 of permit number MTDW0003I and the CWA.
80. On July 20, 2022, Respondent allowed vegetation to grown within and on the banks of wastewater pond 2, in violation of Part 5.5 of permit number MTDW0003I and the CWA.

VI. TERMS OF CONSENT AGREEMENT

81. For the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations in section II of this Agreement;
 - b. admits to the stipulated facts and conclusions of law stated in section IV of this Agreement;
 - c. does not admit to the alleged violations of law in section V of this Agreement;
 - d. consents to the assessment of a civil penalty as stated below;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - f. waives any right to contest any final order approving this Agreement; and
 - g. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
82. Section 309, 33 U.S.C. § 1319, authorizes EPA to assess a civil penalty in this matter.
83. In determining the amount of the penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice required, in accordance with section 309, 33 U.S.C. § 1319.
84. Based on the Violations of Law, and after consideration of the statutory factors in paragraph 83 above, EPA has determined a civil penalty of **\$40,000** is appropriate to settle this matter.
85. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of **\$40,000** within 30 calendar days of the Effective Date of this Agreement;

- b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each and every payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Lisa-kay Prideaux and Matt Castelli at prideaux.lisakay@epa.gov and castelli.mathew@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
86. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses;
 - b. assess a quarterly nonpayment penalty for each quarter during which such failure to pay persists, 33 U.S.C. § 1319(g)(9);
 - c. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - d. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - e. suspend or revoke Respondents’ licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
87. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
88. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Browning Facility or Two Medicine WTP. Any change in ownership or control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent’s responsibilities under this Agreement.
89. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

90. Except as qualified by paragraph 86, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
91. The Respondent and Complainant consent to electronic service of the Agreement and Final Order at the following email addresses: dgray@blackfeetnation.com and castelli.matthew@epa.gov.

VII. EFFECT OF CONSENT AGREEMENT

92. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
93. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
94. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$59,973 per day per violation, or both, as provided in section 309, 33 U.S.C. §1319, and adjusted for inflation pursuant to 40 C.F.R. part 19. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
95. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal permit.
96. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
97. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VIII. PUBLIC NOTICE

98. As required by section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.45, EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate this Agreement is improper or inadequate.

IX. EFFECTIVE DATE

99. This Agreement shall become effective on the date indicated in the final order.

Consent Agreement In the Matter of Two Medicine Water Company

ECN: 402.0013.2014_BrowningLagoon

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

Date: _____

By: _____
Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**TWO MEDICINE WATER COMPANY
Respondent.**

Date: 12/2/2022

By: 
Alvin Yellow Owl Jr., Manager