

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 APR -6 AM 8:19

IN THE MATTER OF:) Docket No. **CWA_08-2015-0014** FILED
The Town of Lodge Grass,) EPA REGION VIII
Respondent.) **ADMINISTRATIVE ORDER** HEARING CLERK
) **CONSENT**
)
) Proceeding under section 309(a) of the
) Clean Water Act, 33 U.S.C. § 1319(a)

INTRODUCTION

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Town of Lodge Grass (Town) to carry out the goals of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the EPA by section 309(a)(3) of the CWA, 33 U.S.C. §1319(a)(3), and as further delegated to the undersigned Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Consent Order and the compliance agreed to herein is based on the findings of violation of sections 301 and/or 402 of the Act, and of any permit condition or limitation implementing such sections of the Act.

PARTIES BOUND

This Consent Order shall apply to and be binding upon the EPA and upon the Town, its officers, employees, agents, successors and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or operation of the Town’s wastewater collection

and treatment system or Public Works Department shall alter the Town's responsibilities under this Consent Order unless the EPA, the Town and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, 30 calendar days prior to such transfer, the Town shall notify the EPA at the addresses specified in paragraph 36 of the Compliance section of this Consent Order.

STATEMENT OF THE PARTIES

The following FINDINGS OF FACT AND VIOLATION are made solely by the EPA. In signing this Consent Order, the Town neither admits nor denies the FINDINGS OF FACT AND VIOLATION. As such, and without any admission of liability, the Town consents to issuance of this Consent Order and agrees to abide by all of the conditions herein. The Town waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Town may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review of this section 309(a)(3) Consent Order under the Administrative Procedures Act, 5 U.S.C. 701-708. The Town further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND VIOLATION below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

FINDINGS OF FACT AND VIOLATION

1. The Town is a "municipality" as defined in section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2, and as such a "person" for purposes of section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. The Town owns and/or operates a wastewater treatment facility (Facility) that includes a sanitary sewer collection system and a multi-cell wastewater treatment lagoon serving the Town and an adjacent tribal housing complex.
3. The Town is incorporated pursuant to the laws of the State of Montana within the exterior boundaries of the Crow Reservation in Montana.
4. The Crow Tribe (Tribe) does not own, manage or control the Facility.
5. The Facility is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
6. The Facility discharges into a slough of the Little Bighorn River which runs into the Bighorn River, a tributary of the Yellowstone River. The Yellowstone River and its tributaries 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 Act, 33 U.S.C. § 1362(7).
7. Wastewater is a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
8. 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.
9. 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.
10. Effective June 1, 2005, the EPA issued the Town NPDES Permit no. MT0021890 (2005 Permit) under the authority of section 402 of the Act, 33 U.S.C. § 1342. The EPA re-issued the Town the Permit on October 1, 2010 (2010 Permit), which remains in effect.

11. Part 1.3.1 of the 2010 Permit sets limitations on the amounts of specified pollutant constituents allowed in wastewater discharged from the Facility.
12. Part 1.3.1 of the 2010 Permit limits the amount of 5-day biochemical oxygen demand (BOD₅) in Facility wastewater discharge to a 30-day average of 45 milligrams per liter (mg/L) and a 7-day average of 65 mg/L.
13. Part 1.3.1 of the 2010 Permit limits the amount of total suspended solids (TSS) in Facility wastewater discharge to a 30-day average of 100 mg/L and a 7-day average of 135 mg/L.
14. Part 1.3.1 of the 2010 Permit limits the pH of the Facility wastewater discharge to a range of not lower than a pH value of 6 standard pH units and not higher than a pH value of 9 standard pH units.
15. Part 1.3.2 of the 2010 Permit requires the Town to monitor and record monthly for specified constituents at Outfall 001. If no discharge occurs during the entire monitoring period, the Town is required by the 2010 Permit to indicate on the Discharge Monitoring Report (DMR) form that no discharge or overflow occurred. DMRs are due to the EPA postmarked no later than the 28th day of the month following the completed reporting period.
16. Part 1.3.2 of the 2005 Permit required the Town to monitor discharge flow on a weekly basis and report a 30-day average flow and a 7-day average flow on each DMR.
17. Part 1.3.2 of the 2010 Permit requires the Town to monitor discharge flow on a monthly basis and report a 30-day average flow and a 7-day average flow on each DMR.
18. Part 1.3.2 of the 2005 and 2010 Permits requires the Town to monitor the discharge for fecal coliform monthly from April 1 through October 31 of each year and report a 30-day average and a 7-day average on each DMR.

19. Part 1.3.2 of the 2005 and 2010 Permits requires the Town to visually monitor the discharge for oil and grease on a monthly basis and report the presence or absence of oil and grease on each DMR.
20. Part 1.3.3 of the 2005 and 2010 Permits requires the Town to inspect the Facility on at least a weekly basis and maintain information obtained during the inspections in a bound notebook.
21. The Town exceeded the 2005 and 2010 Permit-required effluent limit for BOD₅ 30-day average in January, February, April, June, August, September, October and December 2010; January, February, March, April and September 2011; January, February and December 2013; and January, February and March 2014.
22. The Town exceeded the 2010 Permit-required effluent limit for BOD₅ 7-day average in the months of September and October 2010.
23. The Town exceeded the 2010 Permit-required effluent limit range for pH in the month of August 2010.
24. The Town's exceedences of the 2010 Permit-required effluent limits for the timeframes specified in paragraphs 21, 22 and 23 above, constitute violations of the Permit and the Act.
25. The Town failed to report DMR values for 30-day average flow to EPA for the months of January through September 2010.
26. The Town failed to report DMR values for 30-day average flow and 7-day average flow to EPA for the months of January 2011, January 2012 and January 2014.
27. The Town failed to report DMR values for visual observation for oil and grease to EPA for the months of January 2011, January 2012 and January 2014.

28. The Town failed to report DMR values for 30-day average and 7-day average fecal coliform to EPA for the month of October in 2010, 2012 and 2013.

29. The Town's failure to report DMR values for the constituents specified in paragraphs 25, 26, 27 and 28 above, constitutes violations of the Permit and the Act.

30. During a compliance inspection of the Facility on January 13, 2014, EPA noted the Town had no records of weekly facility inspections.

31. The Town's failure to maintain records of weekly facility inspections is a violation of the Permit and the Act.

ORDER

Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), and considering that the Town has begun engineering design for an upgraded Facility, obtained a portion of the funding needed and is actively pursuing additional funding to upgrade the Facility, the EPA finds that the following compliance measures are in the best interest of the parties and the affected public.

32. Effective immediately, the Town shall monitor any discharge in accordance with section 1.3.2 of the 2010 Permit.

33. By the 28th day of the month following the effective date of this Consent Order and each month thereafter, the Town shall submit to the persons identified in paragraphs 36 and 37 below, full and complete signed copies of the DMRs as required by section 1.3.2 of the 2010 Permit. If no discharge occurs during the entire monitoring period, it shall be stated on the DMR that no discharge or overflow occurred.

34. Effective immediately, the Town shall complete, retain and make available to the EPA upon request records of weekly lagoon inspections containing the information required in part

1.3.3 of the 2010 Permit. All records shall be kept for the duration specified in part 2.7 of the 2010 Permit.

35. Within 60 days of the effective date of the Consent Order, the Town shall submit a plan and schedule, including current and proposed funding sources, for improvements to the Facility to meet the Town's effluent limits set forth in section 1.3.1 of the 2010 Permit.

36. All notices and reports to the EPA required by this Consent Order shall be given to:

David Rise
U.S. EPA Region 8 Montana Office
10 W 15 Street Suite 3200
Helena, MT 59626
rise.david@epa.gov

37. All notices and reports to the Tribes required by this Consent Order shall be given to:

Connie Howe, Environmental Protection Director
Crow Tribe
P.O. Box 159
Crow Agency, MT 59022-0400
connie.howe@crow-nsn.gov

38. All reports and information required by this Consent Order shall include the following certification statement, signed and dated by either a principal executive officer, ranking elected official for or duly authorized representative of the Town:

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

GENERAL PROVISIONS

39. Issuance of this Consent Order shall not be deemed an election by the EPA to forego any civil or criminal action to seek civil penalties fines, or other appropriate relief under the Act for

the violations set forth in the Findings.

40. Issuance of this Consent Order does not otherwise affect the EPA's ability to enforce or implement the Act.

41. Failure to comply with the terms of this Consent Order may result in the Town's liability for civil penalties for each violation up to \$37,500 per day under section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. part 19. The U.S. District Court may impose such penalties if the court determines the Town violated the Act and failed to comply with the terms of the Consent Order.

42. This Consent Order shall become effective upon execution by both parties and filing with the EPA Region 8 Hearing Clerk.

43. If the Town complies with this Consent Order and section 1.3.2 of the 2010 Permit by submitting timely and complete DMRs for two years from the Consent Order's effective date, the EPA may close the Consent Order.

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

Date: 3/31/15


Suzanne J. Bohan,
Acting Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

TOWN OF LODGE GRASS.

Date: 3/17/2015


Birdie Lion Shows
Mayor

IN THE MATTER OF: THE TOWN OF LODGE GRASS
DOCKET NO.: CWA-08-2015-0014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER ON COMPLIANCE** were hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following Monday, April 06, 2015 as indicated below:

to:

The Honorable Birdie Lion Shows, Mayor
Town of Lodge Grass
P.O. Box 255
Lodge Grass, MT 59050
CERTIFIED MAIL # 7008 3230 0003 0726 1129

and a copy to:

Joe Lovato
Public Works Operator
Town of Lodge Grass
P.O. Box 255
Lodge Grass, MT 59050

Date: Monday, April 06, 2015

By: Dayle Aldinger
Dayle Aldinger