UNITED STATES 2012 OCT -1 AM 11:11 ENVIRONMENTAL PROTECTION AGENCY REGION 8

IN THE MATTER OF:

City of Dupree, South Dakota Dupree, South Dakota NPDES Permit No. SDG589116, Docket No. CWA-08-2010-0040

Respondent.

COMPLAINANT'S STATUS REPORT

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Complainant United States Environmental Protection Agency, Region 8 (EPA), by and through its undersigned attorney, provides the following Status Report in the above-referenced matter pursuant to the ORDER FOR THIRD PREHEARING CONFERENCE CALL issued by the Honorable Elyana R. Sutin, Presiding Officer, dated July 3, 2012, and the third prehearing conference call conducted on July 24, 2012.

1. Following the third prehearing conference call regarding the above-reference matter on July 24, 2012, the Respondent submitted financial information to the Complainant the first week of September in support of its ability to pay claim. The Complainant finished its review of the Respondent's submittals on September 19, 2012, with assistance from Mayor Lemke. Although the parties have not yet discussed the specifics of the EPA's findings, the EPA determined that the Respondent's current financial condition presents a legitimate inability to pay the full amount of the proposed penalty in the Administrative Complaint and Notice of Opportunity for Hearing (Complaint) issued September 30, 2011.

2. Prior to resolving the Complaint and proposed penalty, the Respondent needs to return the facility to compliance with the Clean Water Act and regulatory violations alleged by fully complying with the underlying Order for Compliance dated June 17, 2011. Specifically, the Respondent has partially

complied with paragraphs 32 and 33, but needs to complete the required action items set forth therein prior to settlement. All of the remaining paragraphs and requirements have been addressed.

3. With regard to paragraph 32 of the Administrative Order, the Respondent committed to providing the Complainant with invoices, photographs or other information or, alternatively, an affidavit from the maintenance director, verifying that the repairs to permanently address the violations have been successfully completed. This information has not yet been submitted.

4. With regard to paragraph 33 of the Administrative Order, Complainant offered to provide comments on the Respondent's draft Capacity, Management, Operation and Maintenance plan and subsequently schedule a conference call with the maintenance director and Brosz Engineering representative. A revised plan will be submitted to the EPA for review and approval. These action items have not occurred. Natasha Davis of the EPA Region 8 Water Technical Enforcement Program is committed to providing written comments on or about October 17th, and scheduling the call for the following week. Once the plan is approved by the EPA and finalized by the Respondent's engineer, this requirement of the Administrative Order will be satisfied.

5. Concurrently, Complainant will schedule settlement negotiations with the Respondent with the objective of reaching a settlement-in-principal by the end of October. In the event that the parties settle this matter, they will endeavor to file a fully-executed Consent Agreement with the presiding officer no later than the end of November 2012.

6. If the parties fail to file a Consent Agreement by the end of November 2012, Complainant requests that the presiding officer, subject to her discretion, issue a fourth prehearing order or schedule a prehearing conference call to ensure timely resolution of this matter. Alternatively, Complainant would be pleased to provide a second status update at that time.

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8

Date: 10

By: Amy Swanson, Senior Enforcement Attorney Legal Enforcement Program EPA Region 8 1595 Wynkoop Street (8ENF-L) Denver, Colorado 80202-1129 Telephone: (303) 312-6906

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 1, 2012 (first business day following September 30, 2012 due date) the original and one true copy of the COMPLAINANT'S STATUS UPDATE was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent as follows:

Via hand-delivery to:

The Honorable Elyana R. Sutin Regional Judicial Officer U.S. EPA Region 8 (8RC) 1595 Wynkoop Street Denver, CO 80202-1129

and via electronic and first class U.S. mail to:

Eric H. Bogue, Attorney Bogue & Bogue, LLP P.O. Box 400 Dupree, SD 57623-0404 boguelaw@faithsd.com

Date: 10/1 2012

By: Judith M. Mclernan