



To: Sarah Bahrman/R8/USEPA/US@EPA,
Seth Draper/R8/USEPA/US@EPA, Lisa Kahn/R8/USEPA/US@EPA, Kimberly
Cc: Pardue-Welch/R8/USEPA/US@EPA, Monia Ben-Khaled/R8/USEPA/US@EPA, Natasha
Davis/R8/USEPA/US@EPA, Gary Carlson/R8/USEPA/US@EPA,
Bcc:
Subject: Re: Fw: Dupree, South Dakota - SSO
From: Andrea Griese/R8/USEPA/US - Wednesday 03/09/2011 02:37 PM

I talked to IHS and let them know. We did realize that the WEB Rural Water system (regulated by SD) intake is on the Missouri River near where the Moreau River comes in. I doubt anything would reach there as everything is still frozen at this point and there is quite a distance for it to travel. Just wanted to let you know though in case you need to let SDDENR know.

Andrea Griese, P.E.
USEPA Region 8 - Pierre Office
420 S. Garfield - Suite 500
Pierre, SD 57501
(605) 945-1192
fax: (605) 945-1237
griese.andrea@epa.gov

-----Sarah Bahrman/R8/USEPA/US wrote: -----

To: Seth Draper/R8/USEPA/US@EPA
From: Sarah Bahrman/R8/USEPA/US
Date: 03/09/2011 03:33PM
Cc: Lisa Kahn/R8/USEPA/US@EPA, Kimberly Pardue-Welch/R8/USEPA/US@EPA, Monia Ben-Khaled/R8/USEPA/US@EPA, Natasha Davis/R8/USEPA/US@EPA, Gary Carlson/R8/USEPA/US@EPA, Andrea Griese/R8/USEPA/US@EPA
Subject: Re: Fw: Dupree, South Dakota - SSO

Hi Seth -

I spoke with Andrea Griese about this and there are no public water systems that are affected by this discharge. That entire area (both tribal and state) is served by the Mni Waste Regional Water System, and the intake for that system is along the Missouri River. However, there may be private wells that are affected. Andrea will notify IHS staff in SD to make sure they are aware of this.

Thanks,
Sarah

Sarah E. Bahrman
Tribal Drinking Water Liaison
U.S. Environmental Protection Agency - Region 8
1595 Wynkoop St
Denver, CO 80202
Mail Code: 8P-W-DW

Phone: 303.312.6243
Toll Free Fax: 1.877.876.9101

Kimberly Pardue-Welch---03/09/2011 02:01:56 PM---Here ya go, let me know if I can assist. Thanks,

From: Kimberly Pardue-Welch/R8/USEPA/US
To: Sarah Bahrman/R8/USEPA/US@EPA

COMPLAINANT'S
EXHIBIT NO. 5

Date: 03/09/2011 02:01 PM
Subject: Fw: Dupree, South Dakota - SSO

Here ya go, let me know if I can assist.

Thanks,
-KPW

----- Forwarded by Kimberly Pardue-Welch/R8/USEPA/US on 03/09/2011 02:01 PM -----

From: Seth Draper/R8/USEPA/US
To: Lisa Kahn/R8/USEPA/US@EPA, Kimberly Pardue-Welch/R8/USEPA/US@EPA
Cc: Monia Ben-Khaled/R8/USEPA/US@EPA, Natasha Davis/R8/USEPA/US@EPA
Date: 03/09/2011 01:44 PM
Subject: Dupree, South Dakota - SSO

Lisa and Kim,

I have gotten a report from the Cheyenne River Sioux Environmental Office that the city of Dupree, South Dakota is discharging from their lift station. I called the city this morning and their employee confirmed that they are discharging from their lift station. The new wastewater operator is not familiar with the needed necessary steps that should be taken in this event. I have made him aware of his permit requirements, but I am not sure whether he has warned any downstream users. The city is discharging into Bear Creek which appears to flow north to Moreau River.

Do you know of any drinking water users who should be warned of this discharge?

Please let me know if you have any questions.

Seth Draper
Environmental Scientist
(303) 312-6763
NPDES Unit
Water Technical Enforcement Program
EPA Region 8
1595 Wynkoop St.; Denver CO. 80202



To: Natasha Davis/R8/USEPA/US@EPA,
Cc: "Nelson David" <dnelson@crstepd.org>,
Bcc:
Subject:
From: "Misti Hebb" <mhebb@crstepd.org> - Monday 03/21/2011 09:07 AM

15 attachments

					
DSC00074.JPG	DSC00075.JPG	DSC00076.JPG	DSC00077.JPG	DSC00078.JPG	DSC00079.JPG
					
DSC00080.JPG	DSC00081.JPG	DSC00082.JPG	DSC00083.JPG	DSC00084.JPG	DSC00085.JPG
					
DSC00086.JPG	DSC00087.JPG	DSC00088.JPG			

Natasha

Here are the pictures you requested.

Misti

Information from ESET NOD32 Antivirus, version of virus signature
database 5959 (20110316)

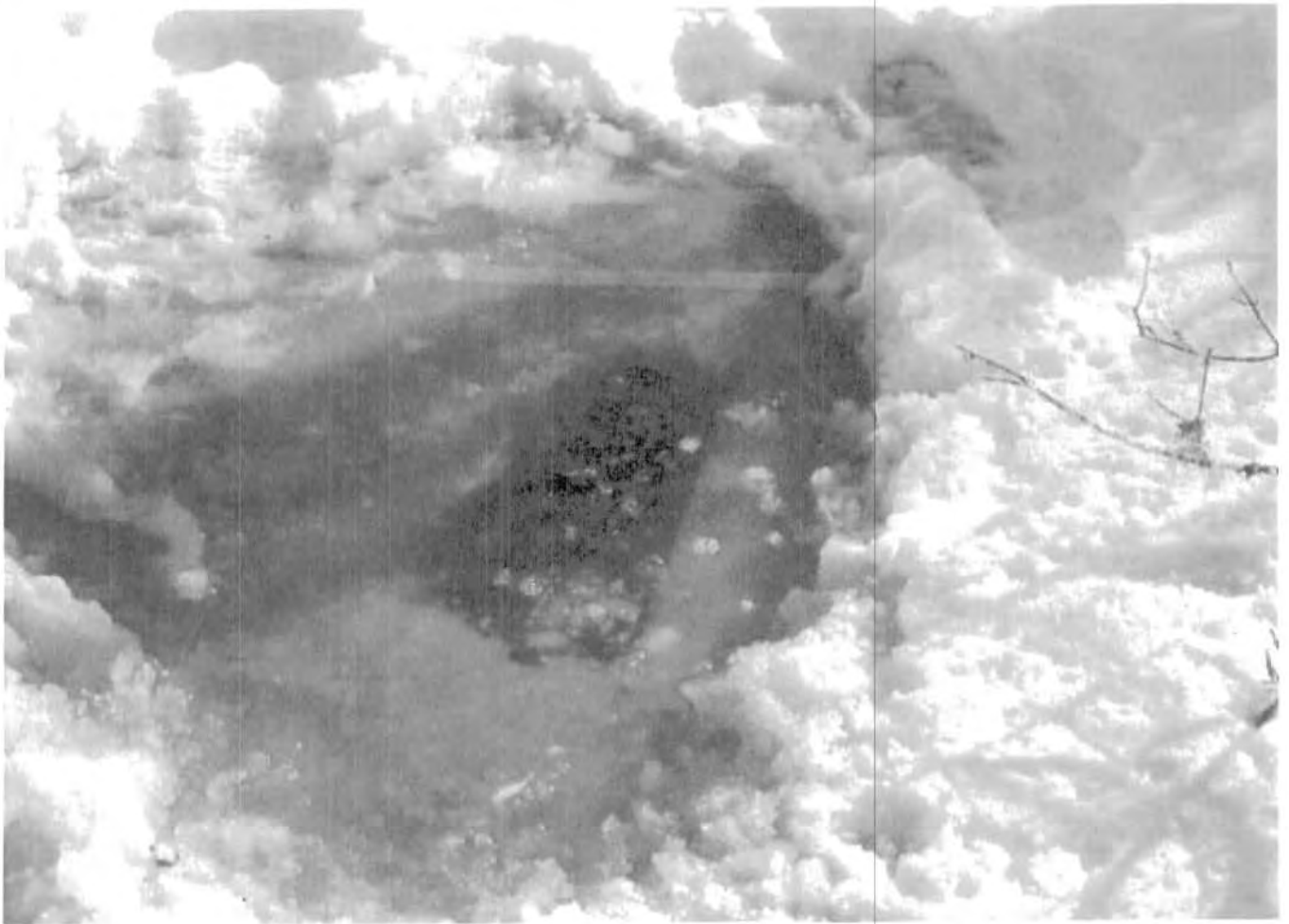
The message was checked by ESET NOD32 Antivirus.

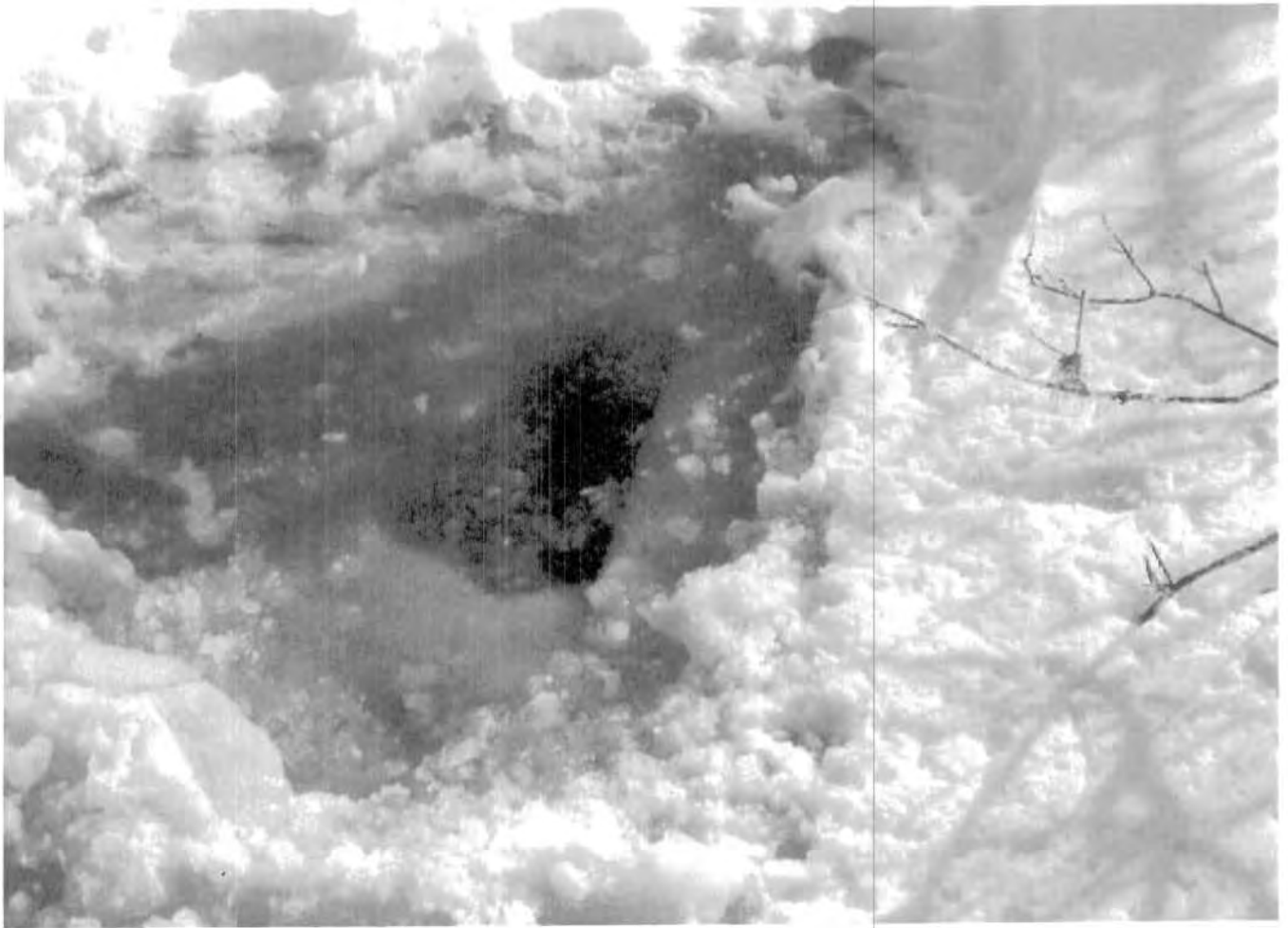
<http://www.eset.com>

COMPLAINANT'S
EXHIBIT NO. 6



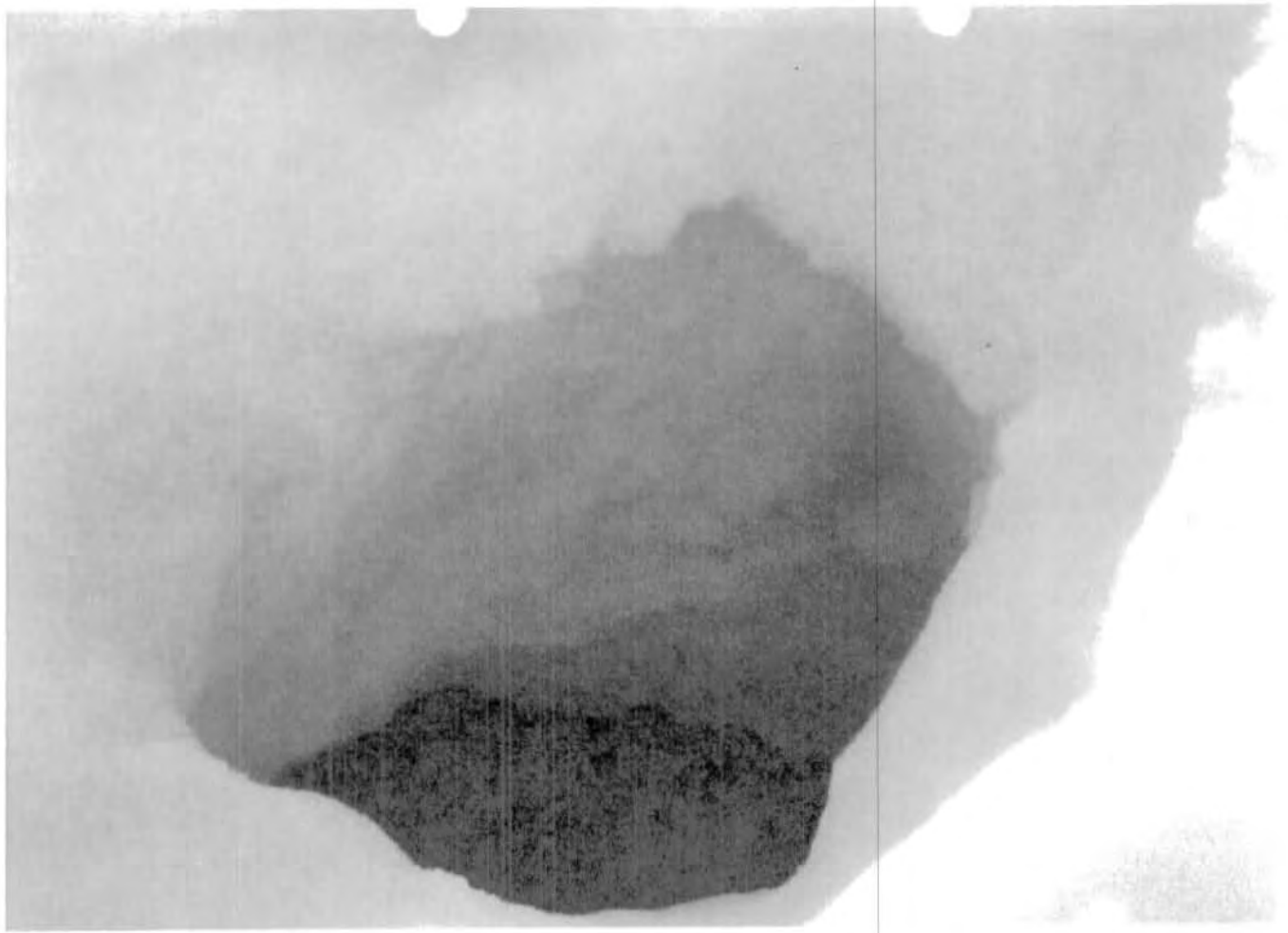
















To: Natasha Davis/R8/USEPA/US@EPA,
Cc:
Bcc:
Subject: City of Dupree lift station
From: Ian Pistulka <big.man.chubs@gmail.com> - Monday 03/21/2011 01:47 PM

Natasha,

The waterline of Dupree's lift station has malfunctioned discharging waste water into Bear Creek. It was discovered on March, 1, 2011. We believe the malfunction was due to weather and shifting of the ground. When we are able to get to the area we will find the problem and replace the line. We will prevent any more problems to occur by placing concrete in the necessary areas or also replace more lines if need be.

Ian Pistulka

City of

Dupree Maintenance
P.S. Average flow 21,000 GPD roughly.

COMPLAINANT'S
EXHIBIT # 7



To: cducheneaux@crstepd.org,
Dale Roy/R8/USEPA/US@EPA, Darcy Oconnor/R8/USEPA/US@EPA, David
Janik/R8/USEPA/US@EPA,
Monia Ben-Khaled/R8/USEPA/US@EPA,
City of Dupree SSO
Natasha Davis/R8/USEPA/US - Tuesday 04/12/2011 09:43 AM

Carlyle,

I spoke with Ian Pistulk on March 21, 2011 regarding the sanitary sewer overflow occurring on the inflow line to the lift station. I was told that the overflow began on March 9, 2011 and it was too snowy at the time to get the necessary equipment into the area to repair the line, but as soon as the snow melted they would begin repairs. While I was out of the office last week, you brought to our attention that the problem has not been addressed. Seth Draper, Region 8 NPDES Enforcement, contacted Ian to discuss their plans to repair the line and was told that the City does not have the funding to address this problem, but would do what they can when the ground dries out. Seth communicated that EPA found it unacceptable to wait any longer to address the problem. Ian made an effort to discuss the SSO and funding repairs to the line break with City Council at their regularly scheduled meeting last night. I contacted the City office this morning, Ian was unavailable, and the person I spoke with did not think that the issues was discussed at last night's meeting. With all this in mind, and especially since you have received information from members living in Dupree that this SSO has been ongoing since last summer, EPA would like to take immediate action.

At this time EPA is proposing to move forward with an Order to stop the SSO immediately. Normally EPA sends out a tribal interest letter and consultation letter to the Chairman in order to determine whether the Tribe owns, operates, or has any general interest in the type of enforcement pursued by EPA, as well as to consult with the Tribe on the content of an enforcement action. EPA feels that this problem cannot wait for said letters to be sent and proposes to move forward with an Order as soon as possible. Please discuss this with your Chairman and let me know whether you or Mr. Keckler would like to provide any statements to EPA regarding Tribal interest as well as what, if any, issues you would like to have addressed by the Order.

Thank you for your continued commitment to communicating with the NPDES Enforcement Unit and to protecting public health and the environment on the Cheyenne River Sioux Reservation.

Natasha Davis
USEPA Region 8
NPDES Enforcement Unit
(303) 312-6225

COMPLAINANT'S
EXHIBIT NO. 8



RE: Dupree
 Natasha Davis to: Caryle
 Cc: Amy Swanson

05/06/2011 03:16 PM

I haven't received an e-mail from Chairman Keckler. Can you please resend it?

 Natasha Davis
 USEPA Region 8
 NPDES Enforcement Unit
 (303) 312-6225

"Caryle" Natasha, you should have received a email from... 05/06/2011 01:56:43 PM

From: "Caryle" <cducheneaux@crstepd.org>
 To: Natasha Davis/R8/USEPA/US@EPA
 Date: 05/06/2011 01:56 PM
 Subject: RE: Dupree

Natasha, you should have received a email from Chairman Keckler around April 18-19 regarding this matter, please email us back if you didn't get the email and we will resend. Also sent hard copy.

Carlyle

-----Original Message-----

From: Davis.Natasha@epamail.epa.gov [mailto:Davis.Natasha@epamail.epa.gov]
 Sent: Friday, May 06, 2011 11:38 AM
 To: Caryle
 Cc: David Nelson; kevin.keckler@yahoo.com
 Subject: Re: Dupree

Last I heard they were trying to get Eagle Butte Plumbing and Heating out to TV the lines. I haven't heard whether this has happened yet. Ian was also going to sample the lagoon and request discharge. I think that he has sampled, but I haven't received the result yet. We are really close to issuing the Order, but we haven't received your response yet to the e-mail I sent regarding tribal interest and consultation. Can you send me a scanned copy or fax the response?

Natasha

 Natasha Davis
 USEPA Region 8
 NPDES Enforcement Unit
 (303) 312-6225

From: "Caryle" <cducheneaux@crstepd.org>
 To: Natasha Davis/R8/USEPA/US@EPA
 Cc: "David Nelson" <dnelson@crstepd.org>, <kevin.keckler@yahoo.com>
 Date: 05/06/2011 10:32 AM

COMPLAINANT'S
 EXHIBIT NO. 9

Subject: Dupree

Natasha, are there any new developments with the leak at lift station in Dupree?

Carlyle

_____ Information from ESET NOD32 Antivirus, version of virus signature database 6100 (20110506) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

_____ Information from ESET NOD32 Antivirus, version of virus signature database 6100 (20110506) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

_____ Information from ESET NOD32 Antivirus, version of virus signature database 6101 (20110506) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>



Fw: Permit authorization letter and general permit for the Dupree Wastewater Treatment Facility SDG589116
Natasha Davis to: Amy Swanson

05/20/2011 01:22 PM

Attached is the authorization letter for the city of Dupree.

Natasha Davis
USEPA Region 8
NPDES Enforcement Unit
(303) 312-6225

----- Forwarded by Natasha Davis/R8/USEPA/US on 05/20/2011 01:21 PM -----

From: Gail Franklin/R8/USEPA/US
To: big.man.chubs@gmail
Cc: Natasha Davis/R8/USEPA/US@EPA
Date: 05/19/2011 05:31 PM
Subject: Permit authorization letter and general permit for the Dupree Wastewater Treatment Facility SDG589116

Ian: Attached is the permit coverage authorization letter and general permit for the Dupree, South Dakota Wastewater Treatment Facility, Permit Number SDG-589116 -



Signed cover letter for Dupree WWTF Permit SDG589116.pdf Dupree WWTF SDG589116 permit.docx

Sandra Lemke will be receiving an official letter and permit by certified mail in the next few days. Please make sure you keep those documents for your facility records, and follow the permit conditions to ensure operation of your facility is in regulatory compliance.

Also, please make a copy of the form on page 36 of the permit, fill it out, sign it, and send it to Region 8 for the emergency discharge you have coordinated with Natasha Davis of the Region 8 Enforcement Unit.

Let me know if you have any questions.

Thank you!

Gail Franklin
Wastewater Unit
U.S. EPA Region 8
Phone: (303) 312-6497
franklin.gail@epa.gov

COMPLAINANT'S
EXHIBIT NO. 10



Dupree
Natasha Davis to: Amy Swanson

07/20/2011 04:28 PM

From: Natasha Davis/R8/USEPA/US
To: Amy Swanson/R8/USEPA/US@EPA

Amy,

Here is the e-mail and photos from Bill Henderson. He can be reached at 605-365-7515 (cell) or 605-365-5418 (home). Bill's wife sent the e-mail, so I suppose she can be reached at the e-mail address below.

Natasha Davis
USEPA Region 8
NPDES Enforcement Unit
(303) 312-6225

----- Forwarded by Natasha Davis/R8/USEPA/US on 07/20/2011 04:26 PM -----

From: <HC3033@k12.sd.us>
To: Natasha Davis/R8/USEPA/US@EPA
Date: 06/22/2011 10:00 AM
Subject:

From: Callie, Henderson (S-Dupree)
Sent: Friday, June 17, 2011 4:02 PM
To: davis.natasha@epa.gov
Subject:

Natasha,

We just took these pictures. The wind blew hard the other day and slopped it over, but it isn't running over today. There is less than four inches of free board until it would run over today. Picture number 30 is my land. You can tell where it has ran over and killed the grass. The other side of the tree line is where my parents live. Just this side of the tree line is where it is filling the draw.

Thank you,

Bill Henderson

COMPLAINANT'S
EXHIBIT NO. //



lagoon 042.jpg



lagoon 001.jpg



lagoon 015.jpg



lagoon 017.jpg



lagoon 020.jpg



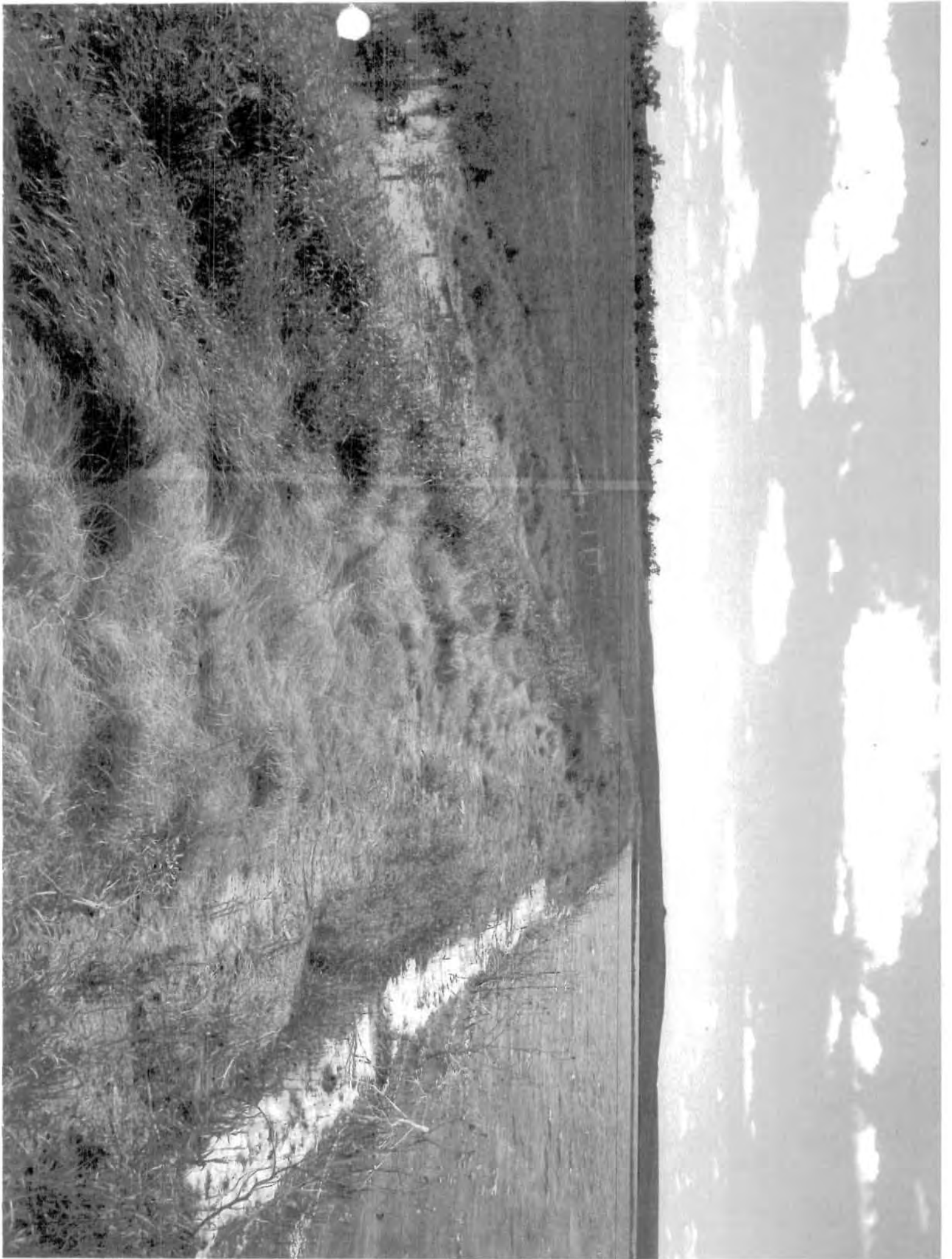
lagoon 027.jpg



lagoon 030.jpg



lagoon 044.jpg



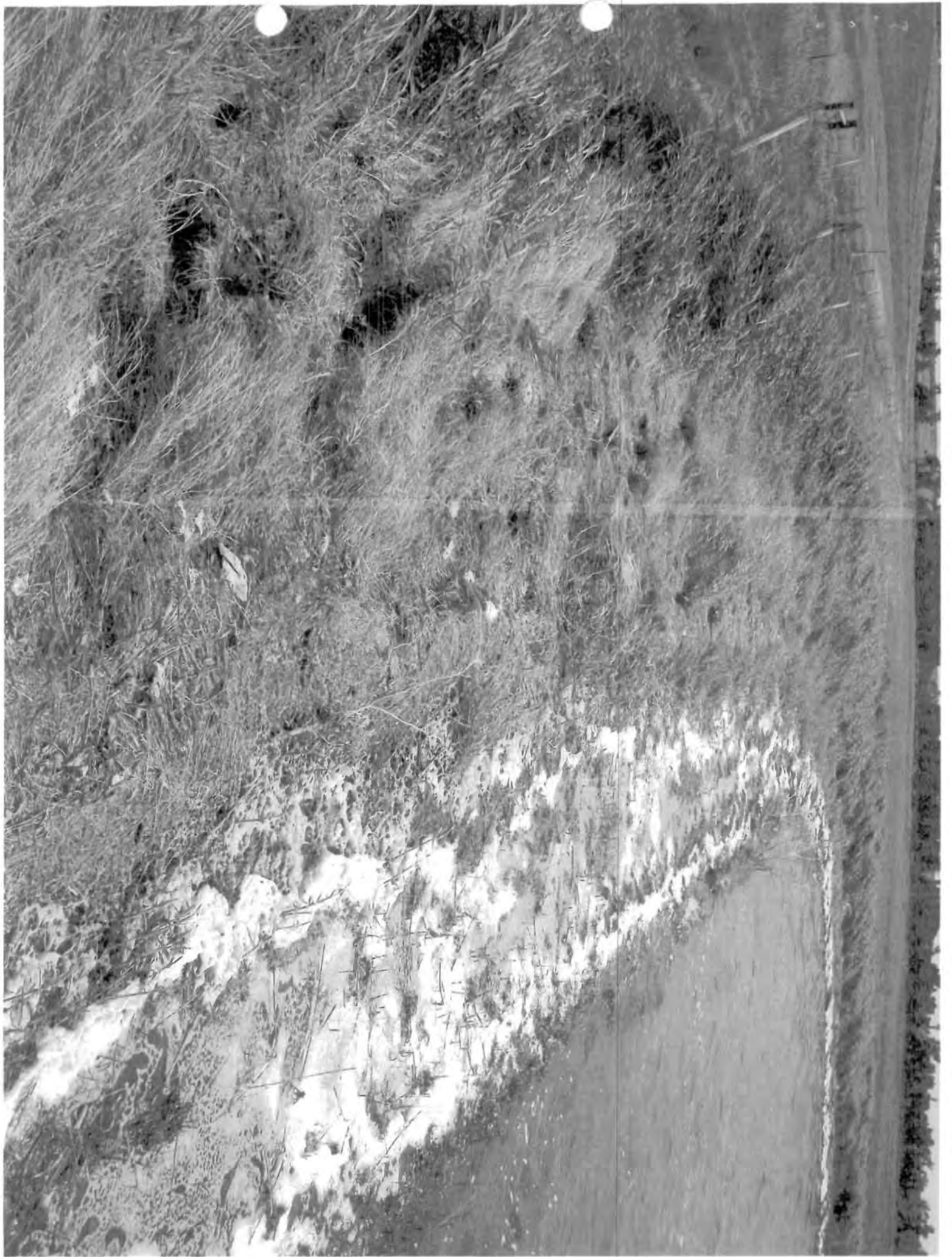


Faint, illegible text or markings on the right side of the page, possibly bleed-through from the reverse side.

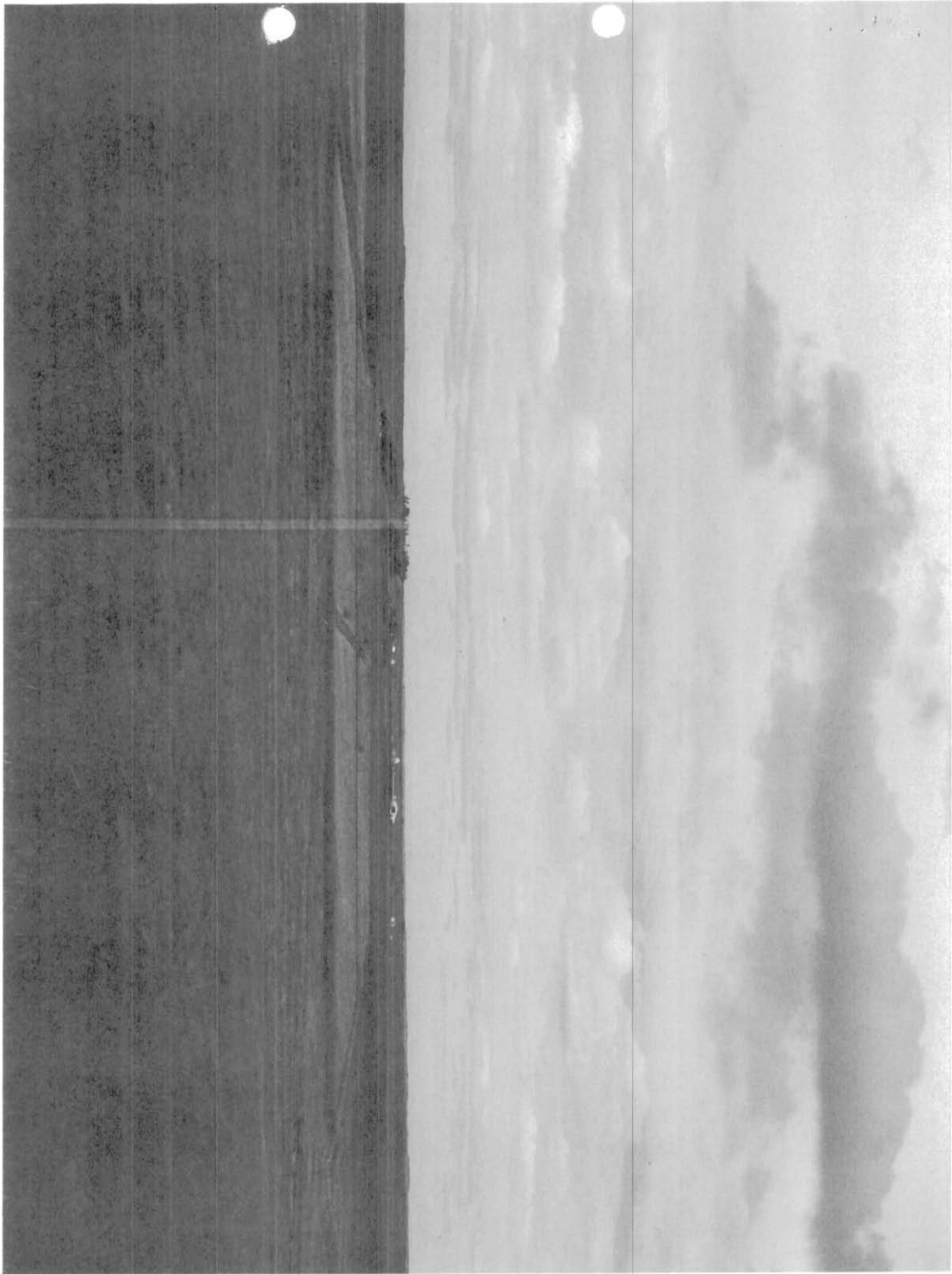















Re: 
 Natasha Davis to: cityofdupree
 Cc: Amy Swanson, boguelaw, cducheneaux

09/15/2011 03:13 PM

From: Natasha Davis/R8/USEPA/US
 To: "cityofdupree" <dcouncil@lakotanetwork.com>
 Cc: Amy Swanson/R8/USEPA/US@EPA, boguelaw@faithsd.com, cducheneaux@crstepd.org

Ian,

Thank you for providing an update regarding the status of the wastewater collection and treatment system for the City of Dupree. I'm not clear whether this letter was submitted to as required by the Order for Compliance (Order) issued by EPA on June 17, 2011 or if it was submitted as a courtesy to keep EPA updated on the issues the City is addressing as a result of the sanitary sewer overflow. Either way, some of the missing information includes dates that the lift station floats were replaced and the SSO ceased, as well as the inadequacy of the Emergency Response Plan that I assume was included because it was required to be submitted under Paragraph 33 of the Order and was due September 12, 2011.

I have also been made aware that there were two discharge events from the lagoon this summer; one in June and the other in August. I also need to know the exact dates that the discharges began and ended as well as any sample analyses submitted on the form on the last page of the permit.

Natasha

 Natasha Davis
 USEPA Region 8
 NPDES Enforcement Unit
 (303) 312-6225

"cityofdupree" From: "cityofdupree" <dcouncil@lakotanetwork... 09/15/2011 10:57:23 AM

From: "cityofdupree" <dcouncil@lakotanetwork.com>
 To: Natasha Davis/R8/USEPA/US@EPA
 Date: 09/15/2011 10:57 AM
 Subject:

Ian Pistulka
 Maintenance
 City of Dupree
 Phone: 605-365-5181
 Fax: 605-365-5183



Natasha if there is anything I missed please notify me. Letter to EPA.docx

COMPLAINTS
 EXHIBIT NO. 12

U.S. EPA,

We have insured that the line to our lagoon is not broken; it was a malfunction with the lift station floats. I have replaced both floats in our system and inspected them to make sure they work correctly. The lift station has also had a full cleaning. The system malfunction light on top of the lift station will be hooked back into the system. We have Keller Electric working on the electrical boxes in the lift station and the backup generator is being installed. The second pump will be put in the lift station within the next year. The lagoon has been pumped down properly by running agricultural line 1500 ft. across Bill Henderson's field (with his permission) to Bear Creek. We also have plans to fix the fences at both the lift station and the lagoon with the proper warning signs with emergency contact numbers. There are areas in the lagoon levies that have been washed away or have animal burrows that will be fixed in the near future. Stephanie and Monia suggested to me to put in a depth gauge at our lagoon to knowledgably rate the flow of water. We would like to ask Mr. Henderson to dig in an underground discharge line for the system.

Over Flow Emergency Response Plan

- 1) Identify the problem/ make a solution
- 2) Take samples/ flow rates
- 3) Call EPA
- 4) Letter of intent/to Denver and Local EPA
- 5) Notify public
- 6) Fix problem

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.



City of Dupree NPDES Violations
Natasha Davis to: dnelson
Cc: cducheneaux, Amy Swanson, Dale Roy

09/16/2011 08:46 AM

From: Natasha Davis/R8/USEPA/US
To: dnelson@crstepd.org
Cc: cducheneaux@crstepd.org, Amy Swanson/R8/USEPA/US@EPA, Dale Roy/R8/USEPA/US@EPA

Dear Mr. Nelson,

The purpose of this e-mail is to update you regarding EPA's proposed enforcement action against the City of Dupree as well as provide a status update regarding compliance with the administrative enforcement action issued by EPA on June 17, 2011 under the National Pollutant Discharge Elimination System (NPDES) to the City of Dupree wastewater treatment facility and the associated collection system. As you may be aware, the City ceased discharge from the lift station on or about June 30, 2011. However, the City failed to comply with requirements to submit information about their actions and prepare a draft operation and management plan for the collection system as stated in the Order. Based on the City's noncompliance with the Order and subsequent noncompliance with its Permit conditions, it is necessary to escalate enforcement by assessing a penalty to ensure that the City operates its wastewater treatment lagoon in a manner consistent with its Permit and protective of public health and the environment. Please let EPA know if you have any questions or information that you wish us to consider. Please send any such information as soon as possible, and do not hesitate to call me at (303) 312-6225 if you have any questions or concerns.

Natasha Davis
USEPA Region 8
NPDES Enforcement Unit
(303) 312-6225

COMPLAINTS
EPA NO. 13



Dupree's Letter
Natasha Davis to: Amy Swanson

11/10/2011 04:39 PM

From: Natasha Davis/R8/USEPA/US
To: Amy Swanson/R8/USEPA/US@EPA

Amy,

Here is the e-mail that I received from Ian with the letter we discussed this morning.

Natasha Davis
USEPA Region 8
NPDES Enforcement Unit
(303) 312-6225

----- Forwarded by Natasha Davis/R8/USEPA/US on 11/10/2011 04:39 PM -----

From: "cityofdupree" <dcouncil@lakotanetwork.com>
To: Natasha Davis/R8/USEPA/US@EPA
Date: 09/15/2011 10:57 AM
Subject:

Ian Pistulka
Maintenance
City of Dupree
Phone: 605-365-5181
Fax: 605-365-5183



Natasha if there is anything I missed please notify me. Letter to EPA.docx

COMPLAINANTS
ISSUE NO. 14

U.S. EPA,

We have insured that the line to our lagoon is not broken; it was a malfunction with the lift station floats. I have replaced both floats in our system and inspected them to make sure they work correctly. The lift station has also had a full cleaning. The system malfunction light on top of the lift station will be hooked back into the system. We have Keller Electric working on the electrical boxes in the lift station and the backup generator is being installed. The second pump will be put in the lift station within the next year. The lagoon has been pumped down properly by running agricultural line 1500 ft. across Bill Henderson's field (with his permission) to Bear Creek. We also have plans to fix the fences at both the lift station and the lagoon with the proper warning signs with emergency contact numbers. There are areas in the lagoon levies that have been washed away or have animal burrows that will be fixed in the near future. Stephanie and Monia suggested to me to put in a depth gauge at our lagoon to knowledgably rate the flow of water. We would like to ask Mr. Henderson to dig in an underground discharge line for the system.

Over Flow Emergency Response Plan

- 1) Identify the problem/ make a solution
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- 5) Notify public
- 6) Fix problem

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.

USEPA Region 8 NPDES Lagoon Inspection Checklist

NPDES Permit #: <u>SDG589116</u>	Inspectors: <u>Monia Ben-Khaled - EPA</u>
Facility: <u>City of Dupree Wastewater Treatment Facility</u>	<u>Stephanie Gieck - EPA</u>
Lat/Long: <u>45° 3' 58.3" N</u> <u>101° 34' 51.7" W</u>	On-site Representatives/ Title: <u>Ian Pastulka / Operator / City of Dupree</u>
Inspection Date: <u>September 14, 2011</u>	_____
Time in: <u>8:40 AM</u>	_____
Time out: <u>11:05 AM</u>	_____

I. Permit Verification

- | | |
|-----|---|
| No | Inspection observations verify information contained in the permit? |
| No | 1. Current copy of permit on-site? |
| No | 2. Name, mailing address, contact, and phone number are correct in PCS or ICIS? If not, indicate correct information on Form 3560.
The ICIS contact information is incorrect. The phone number and address are correct, but the contact person is for Robyn Dupree, Raymond Lenk (current mayor) was not listed as the contact person for the facility. |
| | 3. Brief description of the water/wastewater treatment plant:

The City of Dupree Wastewater Treatment Facility consists of one lift station (photo 895) and a wastewater treatment lagoon with four cells (photos 908 to 916). Wastewater enters a diversion structure in the center of the lagoon system to be diverted to any of the four cells. Flow can be transferred directly between any two adjacent cells (photos 912 and 916), (see enclosed lagoon schematic and flow diagram). The Bear Creek is just north of the lift station (photo 896).

The facility services the City of Dupree, which consists of an approximate population of 450 people. The City of Dupree has approximately 200 residences, a school and several retail businesses. The stormwater runoff from Main Street flows into the facility.

The Dupree facility is authorized as a category 3 facility (no discharge) under the NPDES general permit for wastewater systems on the Cheyenne River Sioux Reservation. |
| N/A | 4. Facility is as described in statement of basis. If not, what is different?
The facility is covered under a general permit and does not have a statement of basis. |
| Yes | 5. EPA has been notified of any new, different, or increased loading to the WWTP?
The city informed EPA of a storm sewer on Main Street. |
| N/A | 6. Number and location of discharge points are as described in the permit?
The lagoon was originally designed as a total retention lagoon and doesn't have a built-in discharge pipe. |
| N/A | 7. Name of receiving water(s) is/are correct?
Bear Creek, which flows north into Moreau River. |

Comments:

The facility was originally designed as a "no discharge" facility. Due to the extensive amount of snow and rain in the area in 2011 and the discovery of the storm sewer connection on Main Street, the facility may have to discharge regularly. As such, it may need to be changed to a category 2 (permission to discharge) facility under the current general permit.

In March 2011, a pump failure at the lift station resulted in a discharge from the lift station into Bear Creek. An administrative compliance order was issued to the city on June 17, 2011. In June 2011 the facility had a discharge from the lagoon to an adjacent private property and in August 2011 the facility had a discharge from its lagoon (cell 4) into Bear Creek using 1500 ft irrigation pipe which runs through the adjacent private property (photo 917). An administrative penalty order was issued to the city on September 30, 2011.

II. Record Keeping and Reporting

- No Records and reports are maintained as required by permit?
- No 1. All required information is current, complete, and reasonably available?
At the time of the inspection there were no records maintained for inspections of the lagoon and lift station.
- No 2. Information is maintained for the required 3-year period?
- No 3. Sampling and analysis data are adequate and include:
Sampling records were reviewed from 4/20/11 (sanitary sewer overflow [SSO] discharge to Bear Creek), 6/15/11 (discharge event to adjacent land), 6/13/11 (discharge event to adjacent land), and 8/25/11 (discharge event via pipe to Bear Creek).
- Yes a. Dates, times, locations of sampling.
- Yes b. Initials of individual performing sampling.
- Yes c. Referenced analytical methods and techniques in conformance with 40 CFR Part 136.
- Yes d. Results of analyses.
- No e. Dates of analyses (and times if required).
The reviewed documents for the analysis data did not include the time of the analysis.
- No f. Initials of person performing analyses.
The reviewed sampling records show only BOD and TSS analysis results had the initials of the person performing analysis. The analysis results for other parameters did not include this information.
- N/A g. Instantaneous flow at grab sample stations.
- No 4. pH meter calibration records are adequate and include: **The facility did not own a pH meter and used a borrowed meter from the City of Eagle Butte. No records of calibration were available for the City of Dupree discharge events..**
- Yes a. Minimum 2-point calibration.
The facility used a pH meter owned by Eagle Butte. Eagle Butte uses a 7.0 and a 10.0 point calibration but there were no calibration records available.
- No b. Date, time, and initials of individual performing calibration.
No calibration records available.
- Yes c. Calibration is performed before each sampling event.
According to the operator present during the inspection.
- Yes d. pH buffer are not expired. If expired, what is the expiration date?
- Yes 5. Sampling and analysis completed on parameters specified in permit.
- No 6. Sampling and analysis done in frequency specified by permit.
The facility did not submit pre-discharge sampling data for the June and August 2011 events.
- No 7. Lagoon inspection logs are adequate and:
There were no records available of lagoon inspections.
- No a. Being completed at the frequency specified by permit.
- No b. Maintained in a bound notebook.
- No c. Include dates and times of the inspections.
- No d. Include the name of the individual performing the inspection.

No e. Identify operational and/or maintenance problems.

No f. Describe actions taken with regard to identified problems.

Comments: **None.**

III. Permittee Sampling Evaluation

- N/A Sampling meets the requirements and intent of the permit?
- No 1. Samples are taken at sampling location specified by permit?
Samples for the discharges from the lagoon were collected from cell 4 and not at the end of the pipe.
- No 2. Locations are adequate for representative samples?
Samples for the discharges from the lagoon were collected from cell 4.
- N/A 3. Flow proportioned samples are obtained?
- Yes 4. Permittee is using method of sample collection required by permit?
Required method: _____
If not, method being used is:
 Grab
 Manual
 Automatic composite
- Unknown 5. Sample collection procedures are adequate and include:
- N/A a. Sample refrigeration during compositing.
Unknown b. Proper preservation techniques.
Issues:
- Yes c. Containers in conformance with 40 CFR 136.3.
Issues:

Comments: Sampling records were reviewed from 4/20/11 (SSO discharge to Bear Creek), 6/13/11 (discharge event to adjacent land), 6/15/11 (discharge event to adjacent land), and 8/25/11 (discharge event via pipe to Bear Creek),

IV. Collection System

- No Collection system properly maintained?
1. Collection system is (check one):
(X) Combined
() Separate
() Both
- Yes 2. Procedures for sewer cleaning, including preventive maintenance schedules (jetting, inspections, etc.), are established and performed on time?
Jetting is done as needed.
- No 3. Sewer backups into basements occur during high flows or due to blockages?
- No 4. Manholes overflow during high flows?
If yes, specify dates and briefly describe, including total volumes of each event and receiving waters:
- Yes 5. The collection system includes lift stations? **One lift station**
If yes, provide the latitude/longitude of each: **45° 3' 17.07" N, 101° 36' 10.33" W.**
- No 6. Lift stations are being properly maintained?
The March 2011 SSO event was a result of the lift station floats that trigger the pumps not being cleaned. Since the SSO, the operator has started regularly cleaning the floats. Grease remover was observed on-site (photo 906). The influent grate just before the wet well of the lift station is cleaned daily (photo 900).
- No a. The wet well is pumped periodically?
Frequency:
There were no records of wet well pumping.
- No b. The pump hours are recorded and reviewed?
There were no records of pump hours.
- Yes 7. Bypasses/overflows have occurred from the collection system, including lift stations, in the last five years?
If yes, specify dates and briefly describe, including total volumes of each event and receiving waters:
An SSO from the lift station started on March 1, 2011 and lasted for 122 days. An estimated 1573 gallons per day of wastewater were discharged into Bear Creek. The overflow was a result of the floats that trigger the pumps not being cleaned.
- N/A 8. The community has a sump pump ordinance? **Some residences pump wastewater into their yard.**
- No 9. Testing for inflow/infiltration has occurred in the last five years?
- No 10. Sources of inflow/infiltration have been identified?
- No 11. Measures are being taken to correct inflow/infiltration problems?
- Yes 12. The collection system, or portions of it, have been upgraded since the last inspection?
If yes, describe: **Some old pipes were replaced with PVC pipes for a limited area of the collection system. It is unknown where and when this replacement took place.**
- Yes 13. The community has food service establishments (restaurants, school cafeterias, etc.)? **One restaurant/café.**

No 14. The facility accepts hauled septic waste?

Comments: **The jetting truck may discharge solids from the collection system in the lagoon.**

V. Facility Site Review

- No Treatment facility properly operated and maintained?
- Yes 1. Standby power or other equivalent provision is provided?
If yes, specify type: **Propane Generator**
At the time of the inspection, a propane generator was being prepared to be installed at the lift station (photos 894 and 895). According to the operator present during the inspection the installation was to be completed within a couple days of the EPA inspection.
- Yes 2. Facility has an alarm system for power or equipment failures.
What kind of problems has the facility experienced due to power failures?
The alarm light was not working at the time of the inspection. In January 2010 power failure nearly caused a lift station failure.
- No 3. Treatment control procedures are established for emergencies?
- Yes 4. Facility can be by-passed (internal, collection system, total)?
If yes, describe: **Wastewater that enters a diversion structure in the center of the system can be distributed to any of the four cells (see attached lagoon schematic and flow diagram).**
- Yes 5. Regulatory agency was notified of any bypass (treated and/or untreated)?
Dates: **3/1/11 to 6/30/11 (SSO discharge to Bear Creek).**
- No 6. WWTP has adequate capacity to ensure against hydraulic and/or organic overloads?
At the time of the inspection, all four cells appeared to have been full at some point with little or no free board (photos 908 to 911 and photo 914).
- Yes 7. All treatment units, other than back-up units, are in service?
- No 8. O&M manual available and up-to-date?
There was no O&M manual available at the time of the inspection.
- No 9. Procedures for facility O&M, including preventive maintenance schedules, are established and performed on time?
There were no established O&M procedures for the facility.
- No 10. Adequate spare parts and supplies inventory (including flow meters) are maintained, as well as major equipment specifications and/or repair manuals?
There were no records of supply inventory and/or repair manuals.
- No 11. Up-to-date maintenance and repair records are kept for major pieces of equipment?
- No 12. Lagoon is being properly maintained, including:
- No a. Locks, gates, fences, and sign are intact? **Part of the fence at the lift station was broken and the gate at the lagoon was unlocked (photos 901, 904 and 907).**
- Yes b. Vegetation is mowed on the inside, outside slopes and top of dikes?
- No c. Outside toe of dikes show no evidence of seepage and/or rodent damage? **The east berm of cell 4 had animal burrows (photo 923).**
- No d. Inside slopes of dikes show no evidence of erosion and/or rodent damage? **The inside wall of the berm between cells 2 and 3 had evidence of erosion (photo 912)**

No e. Cattails and/or bushes and/or trees are not growing in the lagoons? **There were trees growing inside cells 2 and 3 (photo 912)**

No 13. Qualified operators and staff?

Number of staff

Certification Level

2

Unknown

Until recently, the facility had one operator (Mr. Pastulka), who also had several other responsibilities within the City. The operator did not receive any formal training, nor were previous operators available to train him. The facility recently added one more employee to assist with the various operations and maintenance duties within the City.

No 14. Procedures or practices are used to train new operators?

If yes, describe: **Mr. Pastulka did not receive any training. The recently hired operator receives on-the-job training.**

Comments: **The operator in charge of the facility (Mr. Pastulka) did not appear to understand the requirements of the permit.**

VI. Safety Evaluation

- No** Facility has the necessary safety equipment?
- No** 1. Procedures are established for identifying out-of-service equipment?
If yes, describe:
- Unknown** 2. Personal protective clothing provided (safety helmets, ear protectors, goggles, gloves, rubber boots with steel toes, eye washes in labs)?
- N/A** 3. Laboratory safety devices (eyewash and shower, fume hood, proper labeling and storage, pipette suction bulbs) available?
- Yes** 4. Facility has general safety structures and is enclosed by a fence?
Part of the fence at the lift station was broken and the gate at the lagoon was unlocked (photos 901, 904 and 907).
- No** 5. Portable hoists for equipment removal available?
- Yes** 6. All electrical circuitry enclosed and identified?
- Yes** 7. Warning signs (no smoking, high voltage, nonpotable water, chlorine hazard, watch-your-step, and exit) posted?
- No** 8. Emergency phone numbers listed?
- No** 9. Facility is generally clean, free from open trash areas?
The lift station has debris and trash, which appear to either be from the overflow that occurred in March 2011 or from trash cans used to store influent screenings removed from the lift station's influent grate.
- N/A** 10. MSDS sheets, if required, are accessible by employees?

Comments: **None.**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)

The City of Dupree, South Dakota)
Dupree, South Dakota)
NPDES Permit No. SDG589116)

Docket No. CWA-08-2011-0040

)DECLARATION OF NATASHA DAVIS

Respondent.)
_____)

This declaration is filed in support of a pre hearing exchange for assessment of civil penalties brought by the Complainant, the U.S. Environmental Protection Agency (EPA) Region 8, to supplement the record with respect to its proposed penalty, Natasha Davis, Life Scientist, NPDES Enforcement Unit, EPA Region 8 Water Technical Enforcement Program, hereby submits the following Declaration.

I, Natasha Davis, declare as follows:

1. I am employed by EPA in the Region 8 Water Technical Enforcement Program. Since February 2009, I have held the position of Life Scientist, NPDES Enforcement Unit.
2. In my capacity as a scientist, I am involved with the development of penalty calculations developed for violations of section 301 of the Clean Water Act (CWA).
3. I was involved with development of, and reviewed the final penalty calculation for, the complaint in this matter and have personal knowledge of the matters set forth in this Declaration.
4. On September 30, 2011, EPA filed an Administrative Complaint and Notice of Opportunity for Hearing in this matter, alleging that the Respondent, City of Dupree, South Dakota (Dupree) violated section 402 of the CWA, 33 U.S.C. § 1342, by failing to comply with

the provisions of the NPDES permit issued to the Respondent for discharges from Dupree's wastewater treatment facility within the exterior boundaries of the Cheyenne River Sioux Indian Reservation. The Complaint proposes a penalty of \$30,000.

5. In calculating a penalty, section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), requires that EPA take into account the nature, circumstances, extent and gravity of the violation, and with respect to the violator, 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 may require. The proposed penalty in this matter is consistent with these statutory factors. The CWA statutory factors were used in calculating the proposed penalty because EPA's CWA programs have not adopted pleading (complaint-based) penalty policies and EPA guidance specifically bars the use of settlement penalty policies in administrative litigation. See OECA Guidance on Use of Penalty Policies in Administrative Litigation at p.2, fn.2. A discussion of the application of each of the CWA statutory factors in this matter follows.

6. As to statutory factor 1, the nature, circumstances, extent and gravity of the violation, Dupree owns and operates a Category 3 (no discharge) wastewater treatment facility (facility) that includes a sewer collection and conveyance system, a lift station, and a four-cell wastewater treatment lagoon, serving the incorporated City of Dupree, Ziebach County, South Dakota, within the exterior boundaries of the Cheyenne River Sioux Indian Reservation. Dupree experienced a sanitary sewer overflow (SSO) when it discharged untreated wastewater from the facility's lift station directly into Bear Creek from March 1, 2011 to June 30, 2011. Tribal members reported the incident to the Cheyenne River Sioux Tribe Environmental Program, who in turn reported the incident to EPA on March 9, 2011. The SSO was unreported to EPA and the

Tribe by the Respondent, which is required the permittee to notify EPA within 24 hours of becoming aware of the violation. Furthermore, Respondent did not submit their notification of non compliance letter in a timely manner and with all the required information. Untreated wastewater is a serious pollutant and poses a significant threat to human health by potentially exposing the public to harmful fecal coliform bacteria and other pathogens present in feces. Untreated wastewater also can cause damage to aquatic ecosystems.

Dupree also discharged from the wastewater treatment lagoon in June 2011 and August 2011 and failed to monitor the effluent in compliance with the permit on both occasions. The intent to discharge was given to EPA prior to the first discharge, as required by the Permit, but the notification was not provided for the second discharge. Respondent failed to conduct effluent monitoring during these discharge events.

I used the "Interim Clean Water Act Settlement Policy" (Penalty Policy) to apply the statutory penalty factors in a fair and consistent manner (Exhibit 1) to calculate a gravity component of \$32,983.00 which consists of (1) Health and Environmental Harm and (2) Significance of the Non-effluent Limit Violation. Using the gravity reduction factor for flow, I reduced the gravity component by 30% or \$9,984.90, based on the average daily wastewater discharge flow rate for Dupree.

7. As to statutory factor 2, ability to pay, EPA is without knowledge regarding Respondent's finances, and therefore did not reduce the penalty based upon this statutory factor.

8. As to statutory factor 3, prior history of violations, the complaint is the second enforcement action EPA Region 8 has issued to the Respondent regarding noncompliance with their NPDES permit requirements. Respondent reported a lift station pump failure at the facility

to the State of South Dakota in January 2010. This failure may have resulted in a SSO, but was unreported to EPA. The EPA did not factor history of violations into the penalty calculation.

9. As to statutory factor 4, degree of culpability, Dupree has been subject to an NPDES permit since January 1, 1992. The Respondent should have been aware of the applicable wastewater discharge and notification of non compliance requirements because prior to the discharges in 2011 I provided compliance assistance by phone and e-mail on several occasions where I explained the permit requirements using plain language as well as restating the discharge monitoring requirements in the discharge authorization letter sent in May 2011. Therefore, the Respondent should have been fully aware of its responsibility to meet the requirements related to wastewater discharge monitoring and control mechanisms for SSOs.

Respondent neglected to inspect the facility's lift station at the time the SSO began. Rather than conducting an inspection of the lift station, the Respondent assumed the SSO was the result of a sewer line rupture and claimed that it could not be addressed until enough snow melted to allow access to the sewer line. Not until May 23, 2011, did the operator notice the lift station floats were malfunctioning and required replacement. The floats were finally replaced 38 days later on June 30, 2011. The floats could have been ordered and replaced within a much shorter timeframe. Once the floats were replaced the lift station began functioning properly and the SSO ceased.

Respondent submitted a request for discharge prior to the June 2011 discharge event, yet proceeded to discharge again in August 2011 without any notification. EPA provided a response to the June 2011 request which detailed all of the monitoring requirements and provided further compliance assistance during phone conversations with the operator. Respondent collected

some, but not all of the required number of samples. Respondent has therefore demonstrated knowledge of the need to comply with the permit

10. As to statutory factor 5, economic benefit or savings resulting from the violation, I estimated that by not spending the required funds to periodically inspect the lift station, replace the lift station floats, and perform effluent monitoring the Respondent received an economic benefit. The Respondent avoided required effluent monitoring samples and associated shipping costs and paying for sample analysis of BOD and TSS, avoided the cost of regularly inspecting the facility's lift station, and delayed the cost of purchasing floats for the lift station. Using information on the cost of replacing the lift station floats, cost of providing the required information to EPA and the Tribe, and cost of monitoring the discharge from the facility I estimated an economic benefit of \$1,000. This figure includes the following: (1) the avoided cost of periodic inspections of the lift station (\$212); (2) the delayed cost of replacing lift station floats (\$9); and (3) the avoided cost of performing effluent monitoring for the two discharges in 2011 (\$779).

11. As to statutory factor 6, such other matters as justice may require, EPA is unaware of any such matters and did not make any adjustments to the proposed penalty based on this statutory factor.

12. The facts related to the statutory factors discussed in paragraphs 6 - 11, above, support the proposed penalty of \$30,000 for the failure to fully comply with the NPDES permit issued to the Respondent.

I declare the foregoing to be true and correct to the best of my knowledge, information and belief under penalty of perjury.

Dated: 3/7/2012



Natasha Davis
NPDES Enforcement Unit
U.S. EPA, Region 8