

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 MAR -8 PM 2:50

FILED
EPA REGION VIII
DENVER, CO

IN THE MATTER OF:)
)
City of Dupree, South Dakota)
Dupree, South Dakota)
NPDES Permit No. SDG589116)
)
Respondent.)

Docket No. CWA-08-2011-0040

COMPLAINANT'S PREHEARING EXCHANGE

Complainant, United States Environmental Protection Agency, Region 8 (EPA), files this COMPLAINANT'S PREHEARING EXCHANGE pursuant to 40 C.F.R. § 22.19(a) and ORDER TO FILE PREHEARING INFORMATION EXCHANGE of the Presiding Officer issued January 12, 2012.

I. WITNESSES TO BE CALLED

A. Ms. Natasha Davis
U.S. EPA Region 8
1595 Wynkoop Street (8ENF-W)
Denver, CO 80202-1129

Natasha Davis is a Life Scientist employed with the National Pollutant Discharge Elimination System (NPDES) Unit, EPA Region 8 Water Technical Enforcement Program. She has been employed in this capacity since February 2009.

Ms. Davis, as the custodian of the City of Dupree Wastewater Treatment Facility NPDES enforcement file, will testify regarding the statutory requirements contained in sections 301(a) and 402 of the Clean Water Act (CWA), the NPDES Program established thereunder and the

terms and conditions of the NPDES General Permit for Wastewater Lagoons in Indian Country issued by EPA on September 14, 2010. Ms. Davis further will testify regarding the specific NPDES permit terms and conditions applicable to the City of Dupree under NPDES Permit No. SDG589116, authorized by EPA on May 19, 2011. In her testimony, Ms. Davis will explain the statutory requirements and permit conditions applicable to owners and/or operators of Category 3 (no discharge) wastewater treatment facilities.

Ms. Davis also will identify and discuss the specific violations of the Act and applicable NPDES permit by the Respondent as a result of a sanitary sewer overflow from the Respondent's wastewater treatment facility (facility) into Bear Creek. Ms. Davis will further explain how EPA learned of the violations by testifying about the sanitary sewer overflow complaint received from employees of the Cheyenne River Sioux Tribe, and follow up communications with the Tribe concerning the date, duration and impact of the sewage discharge, along with the City's response. Ms. Davis will testify regarding the potential and actual threat of harm to human health and the environment caused by the sewage discharge, as well as impact to navigable waters.

Ms. Davis will testify regarding the basis, findings, violations alleged and requirements of the Administrative Order EPA issued In the Matter of The City of Dupree, South Dakota, CWA-08-2011-0016, dated June 17, 2011. She will describe conversations with and compliance assistance she provided City representatives to facilitate their compliance with the Administrative Order. She also will describe the City's noncompliance with the Administrative Order and reasons why the matter was escalated to a penalty action.

Ms. Davis will testify regarding the Complaint EPA issued to the City of Dupree on September 30, 2011, including the findings, violations alleged (including June and August 2011 discharge violations in addition to the original sanitary sewer overflow between March 1 and June 30, 2011), penalty proposed and follow-up non-settlement related communications with the City of Dupree.

Ms. Davis will also testify regarding the proposed penalty assessment in the Complaint and requirements of the underlying Administrative Order. Ms. Davis will explain in her testimony the method and rationale used to calculate the penalty proposed in the Complaint based on consideration of the statutory factors set forth in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including but not limited to the nature, circumstances, extent and gravity of the violation(s); the violator's ability to pay; any history of prior violations; the degree of culpability; any economic benefit to the violator resulting from the violations; and other factors as justice may require.

Ms. Davis will establish through testimony the basis for admitting into evidence Complainant's Exhibits 1 through 14, and 16.

B. Ms. Monia Ben-Khaled
U.S. EPA Region 8
1595 Wynkoop Street (8ENF-W)
Denver, CO 80202-1129

Monia Ben-Khaled is an employee of the National Pollutant Discharge Elimination System (NPDES) Unit, EPA Region 8 Water Technical Enforcement Program. She has been employed in this capacity since February 2009. As part of her employment duties, Ms. Ben-Khaled inspects wastewater treatment facilities for permit compliance. Ms. Ben-Khaled will be

called to explain how she typically inspects a Category 3 wastewater treatment facility. Ms. Ben Khaled will testify as to her findings and observations during her inspection of the City of Dupree's wastewater treatment facility on September 14, 2011. Her testimony may include any discussions with City of Dupree representatives regarding her inspection results or compliance assessment.

Ms. Ben-Khaled will establish through testimony the basis for admitting into evidence Complainant's Exhibit 15.

II. WITNESSES THAT MAY BE CALLED

A. Potential City Witnesses

1. Ian Pistulka, Former Maintenance Manager
City of Dupree

Mr. Pistulka as the former Maintenance Manager for the City of Dupree during the period of the sanitary sewer overflow at issue may be called to testify regarding the Respondent's knowledge of the discharge, efforts to repair the discharge and general compliance with the City's NPDES permit. Mr. Pistulka may be called to testify regarding the general working condition of and maintenance schedule for the City's wastewater collection and treatment system, and what if any emergency procedures and additional resources exist for responding to equipment failure that results in a possible sanitary sewer overflow. Mr. Pistulka's testimony may include, but not be limited to, information regarding the overflow, its cause, repair efforts undertaken and related timeframes (cause, duration, and repairs if any, to the lift station). Mr. Pistulka may be

asked to answer questions regarding written communications (including electronic) and verbal conversations he had concerning the discharge with Ms. Davis, Cheyenne River Sioux Tribe representatives and other City officials.

B. Potential Cheyenne River Sioux Tribe Witnesses

1. Carlyle Duscheneaux, Water Quality Coordinator
Cheyenne River Sioux Tribe

Mr. Duscheneaux in his capacity as Water Quality Coordinator for the Cheyenne River Sioux Tribe may be called to testify regarding the City of Dupree's sanitary sewer overflow, including personal observations and communications with City of Dupree representatives.

Mr. Duscheneaux may establish through testimony the basis for admitting into evidence Complainant's Exhibits 8 and 9.

2. David Nelson, Environmental Protection Director
Cheyenne River Sioux Tribe

Mr. Nelson in his capacity as Environmental Director for the Cheyenne River Sioux Tribe may be called to testify regarding the City of Dupree's sanitary sewer Overflow, including personal observations and communications with City of Dupree representatives. Mr. Nelson also may be called to testify to establish the chain of custody for the photographs of Bear Creek provided to Ms. Davis of EPA on March 21, 2011.

Mr. Nelson may establish through testimony the basis for admitting into evidence Complainant's Exhibits 3 and 13.

C. Potential Local Witness

1. Bill Henderson

Mr. Henderson may be called to testify about sewage overflows from the City's wastewater lagoon onto his property, the impact of the discharge and communications with City officials to remedy and/or redress the problem. Mr. Henderson also may be called to testify to establish the chain of custody for the photographs he provided to Ms. Davis of EPA on June 17, 2011, depicting wastewater overflowing from the City's lagoon onto his property.

Mr. Henderson may establish through testimony the basis for admitting into evidence Complainant's Exhibit 11.

III. ADDITIONAL INFORMATION REQUIRED BY THE PRESIDING OFFICER

A. Complainant estimates that it will take one day to put on its case in chief. Complainant requests that the hearing be held in Ziebach County, South Dakota, where the City of Dupree is located consistent with 40 C.F.R. § 22.19(d) and § 22.21(d).

B. Complainant has been ordered to submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty. This statement is attached hereto as the Declaration of Natasha Davis, Complainant's Exhibit 16.

IV. RESERVATIONS

A. Complainant reserves the right to add witnesses to rebut Respondent's case, to call as a hostile witness any witness endorsed or noticed by Respondent, to subpoena any witnesses who is an employee, agent or contractor of the Respondent or is endorsed or noticed by Respondent and to cross-examine any witnesses examined by Respondent at any time.

B. Complainant respectfully reserves its right to supplement this Prehearing Exchange upon adequate notice to Respondent.

V. COMPLAINANT'S EXHIBIT LIST

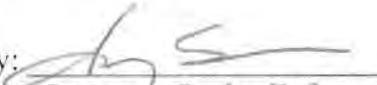
1. U.S. EPA Authorization to Discharge under General NPDES Permit: SDG-589116, effective May 19, 2011.
2. Letter from EPA Wastewater Unit Chief Colleen Gillespie to Ms. Sandra Lemke, Acting Mayor, City of Dupree, dated May 19, 2011, regarding authorization of coverage under General NPDES Permit: SDG-589116.
3. Letter from Cheyenne River Sioux Tribe Environmental Protection Department Director David Nelson to U.S. EPA Region 8, dated April 18, 2011, regarding untreated sewage waste spill from the City of Dupree lift station.
4. Letter from Natasha Davis of the EPA NPDES Enforcement Unit to Ms. Sandra Lemke, Acting Mayor, City of Dupree, dated May 20, 2011, regarding request for discharge.
5. Electronic communications involving multiple EPA Region 8 employees including Sarah Bahrman, Seth Draper, Lisa Kahn, Kimberly Pardue-Welch, Natasha Davis, Monia Ben-Khaled, and Gary Carlson, dated March 9, 2011, regarding report from the Cheyenne River Sioux Tribe Environmental Protection Office concerning discharging by the City of Dupree's lift station.
6. Electronic communication from Misti Hebb, Cheyenne River Sioux Tribe Environmental Protection Division to Natasha Davis, EPA, dated March 21, 2012, forwarding 15 color photographs (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) depicting the sanitary sewer overflow into Bear Creek.
7. Electronic communication from Ian Pistulka, City of Dupree, to Natasha Davis, EPA, dated March 21, 2011, describing the purported cause and discovery of the sanitary sewer overflow, and plans to address the immediate problem and prevent recurrence.

8. Electronic communication from Natasha Davis, EPA, to Carlyle Ducheneaux, Cheyenne River Sioux Tribe, dated April 12, 2011, updating Mr. Ducheneaux on conversations concerning the sanitary overflow with City of Dupree representative Ian Pistulka, and describing EPA's proposed next steps.
9. Electronic communication from Carlyle Ducheneaux, Cheyenne River Sioux Tribe, to Natasha Davis, EPA, dated May 6, 2011, regarding new developments with the City's lift station leak.
10. Electronic communication from Gail Franklin, EPA, to Ian Pistulka, City of Dupree, dated May 19, 2011, providing the permit coverage authorization letter and general permit for the City.
11. Electronic communication from Callie Henderson to Natasha Davis, EPA, forwarded to Amy Swanson, EPA, by Ms. Davis on July 20, 2011, with narrative and eight photos (lagoon.042.jpg, lagoon.001.jpg, lagoon.015.jpg, lagoon.017, lagoon.020.jpg, lagoon.027.jpg, lagoon.030.jpg, lagoon.044) depicting lagoon overtopping onto the Henderson property.
12. Electronic communications between Ian Pistulka, City of Dupree, and Natasha Davis, EPA, dated September 15, 2011, regarding the status of the City's wastewater collection and treatment system, whether Mr. Pistulka's e-mail and attached letter were intended to comply with the Compliance Order issued by EPA on June 17, 2011, and noticing Mr. Pistulka of two discharge events from the lagoon in June and August 2011 with follow-up questions.
13. Electronic communication from Natasha Davis, EPA, to David Nelson, Cheyenne River Sioux Tribe Environmental Protection Division, dated September 16, 2011, providing an update regarding the City's compliance with EPA's Compliance Order issued by EPA on June 17, 2011, and plans to escalate enforcement.
14. Electronic communication from Ian Pistulka, City of Dupree, to Natasha Davis, EPA, forwarded to Amy Swanson, EPA, on November 10, 2011, with undated letter attached describing repairs to the lagoon and lift station.
15. U.S. EPA Region 8 NPDES Lagoon Inspection Checklist for the City of Dupree Wastewater Treatment Facility, NPDES Permit No. SDG589116, prepared by Monia Ben-Khaled, Inspection Date September 14, 2011.
16. Declaration of Natasha Davis, In the Matter of City of Dupree, South Dakota, Docket No. CWA-08-2011-0040, dated March 8, 2012.

Respectfully submitted,

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: 3/8/2012

By: 
Amy Swanson, Senior Enforcement Attorney
Legal Enforcement Program
EPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado, 80202-1129
Telephone No.: (303) 312-6906

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true copy of the COMPLAINTANT'S PREHEARING EXCHANGE and all exhibits 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 first class U.S. mail to:

Eric H. Bogue, Attorney
Bogue & Bogue, LLP
P.O. Box 400
Dupree, SD 57623-0400

Date: 3/9/2012 By: 