

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:	Docket No. CWA-08-2024-0020
Northern Arapaho Utilities, Respondent	ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT
Ethete Water Treatment Plant	Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)

INTRODUCTION

1. This Administrative Order for Compliance on Consent (Consent Order) is issued pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the undersigned EPA official.
2. The Respondent in this Consent Order is the Northern Arapaho Utilities.
3. This Consent Order pertains to Clean Water Act noncompliance at the Ethete Water Treatment Plant (Facility) located in the Town of Ethete, on the Wind River Reservation in Wyoming.

STATUTORY AND REGULATORY BACKGROUND**The Clean Water Act**

4. In order to restore and maintain the integrity of the nation's waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits 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.
5. The Act defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
6. The Act defines "pollutant" to include "sewage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).
7. The Act defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
8. The Act defines "point source" to include any "discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit,

well, discrete fissure [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

The NPDES Program

9. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA (and states or tribes with authorization from the EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
10. EPA implements the NPDES program on the Wind River Reservation, as no other governmental entity has been approved to implement it there.
11. On August 6, 2020, EPA issued Respondent general permit number WYDW0002I (the Permit) for the Facility under the NPDES program.
12. The Permit became effective on August 6, 2020, and expires on June 30, 2024.
13. The Permit requires Respondent:
 - a. To meet the effluent discharge limitations per part 2.2 of the Permit;
 - b. To use sampling and test procedures for pollutants listed in part 3.1 of the Permit in accordance with 40 C.F.R. part 136;
 - c. To certify the accuracy of data submitted in NetDMR in accordance with parts 4.4 and 6.8 of the Permit;
 - d. To record monitoring information set forth in part 4.6 of the Permit;
 - e. To report any non-compliance within twenty-four (24) hours of becoming aware of the circumstances and to submit a written report within 5 days in accordance with part 4.8 of the Permit;
 - f. To inspect the Facility on at least a weekly basis and maintain a log of those inspections in accordance with part 5.5 of the Permit; and
 - g. To properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Respondent to achieve compliance in accordance with part 5.6 of the Permit.

FINDINGS

The following findings apply at all times relevant to this matter, unless otherwise stated.

14. The Facility is located on the Wind River Reservation.

15. The Northern Arapaho Tribe is a federally recognized Indian tribe.
16. Respondent is an Indian tribal organization organized under the laws of the Northern Arapaho Tribe.
17. Respondent is a “municipality,” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4).
18. Respondent is a “person” as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. Respondent owns the Facility.
20. Respondent is the operator of the Facility.
21. The facility discharges to the Little Wind River, which is a relatively permanent tributary of the Wind River, which is a traditional navigable water.
22. The Wind River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
23. On June 30, 2021, EPA inspectors performed an inspection of the Facility and observed the following alleged conditions:
 - a. Respondent failed to sample and analyze three parameters as frequently as required, in violation of part 3.1 of the Permit;
 - b. Respondent exceeded effluent limits for certain parameters from October 2020 through June 2021, in violation of part 2.2.1 of the Permit;
 - c. Respondent failed to follow preservation requirements twice between October 2020 and June 2021, in violation of part 3 of the Permit;
 - d. Respondent failed to provide complete monitoring records for February 2021, in violation of part 4.6 of the Permit; and
 - e. Respondent failed to document operations and maintenance (O&M) activities related to scum and solids seen floating on the backwash pond, in violation of part 5.6 of the Permit.
24. Since the June 30, 2021 EPA inspection:
 - a. Respondent has begun notifying the EPA when effluent exceedances occur as required by part 4.8 of the Permit; and
 - b. Respondent has provided logs indicating that weekly inspections are now being conducted at the Facility as required by parts 5.5 of the Permit.

- c. A technical assistance provider helped the Respondent develop an O&M manual for the Facility; however, the O&M manual has not been implemented fully.

ORDER

Based on the foregoing findings and pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), it is hereby ORDERED, and the Respondent agrees, that:

25. Respondent shall comply with all terms of the Permit, permit number WYDW0002I.

26. Respondent shall:

- a. Within three months from the effective date of this Consent Order, develop and provide to the EPA standard operating procedures (SOPs) to ensure that sampling and analyses are conducted in accordance with the Permit including sampling frequencies and requirements of 40 C.F.R. part 136, including preservation requirements, for all parameters found in the monitoring requirements table of the Permit Authorization.
- b. Accurately report all data in NetDMR, and for twelve months following the effective date of this Consent Order, provide to the EPA all monitoring data, analytical reports, and chain of custody sheets for all parameters, including annual and bi-annual samples, found in the monitoring requirements table of the Permit Authorization, so that the EPA can verify values entered into NetDMR.
- c. Within four months from the effective date of this Consent Order, identify sources of aluminum in the influent, treatment process, and facility discharge and develop a written compliance plan and schedule to resolve aluminum exceedances with timelines for each milestone. Within four months from the effective date of this Consent Order, submit the written compliance plan to the EPA. Within four months from the effective date of this Consent Order, implement the written compliance plan to resolve aluminum exceedances. Respondent shall provide the EPA contact listed in paragraph 28 quarterly updates reports (January 1st, April, 1st, July 1st, and October 1st) until the compliance plan milestones are complete, at which point Respondent shall

provide a final update report notifying EPA of the completion of the compliance plan.

- d. Report any violations of a maximum daily discharge limitation to the EPA within the first workday following the day the Respondent became aware of the violation in accordance with part 4.8.2.3 of the Permit. Submit a follow up report to the EPA within five days of becoming aware of the violation in accordance with part 4.8.3 of the Permit.
 - e. On the effective date of this Consent Order, implement the O&M manual and schedules in accordance with the requirements of part 5.6 of the Permit to address issues referenced in paragraph 23.e above. For the next three months after the effective date of this Consent Order, send to the EPA copies of maintenance logs, including photos, that align with part 5.6.2 of the Permit, according to the schedule.
27. The time periods in this Consent Order are calendar days unless otherwise specified. If any due date specified in this Consent Order falls on a weekend or federal holiday, the relevant deadline shall be the first business day following that date.
28. All notices and reports required by the Consent Order to be given to the EPA shall be sent via email to the following recipient. If an email is not a feasible manner of providing notifications, Respondent shall contact the following individual by telephone to make alternative arrangements.

Brit Rustad
Rustad.brit@epa.gov
(303) 312-6885

29. All reports and information required by this Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a ranking elected official:
30. 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. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.

31. This Consent Order is not a permit and does not constitute a waiver or modification of the terms and conditions of any permit.
32. This Consent Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$66,712 (as adjusted for inflation by 40 C.F.R. part 19) per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.
33. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of the obligation to comply with any applicable federal, state, tribal, or local law or regulation.
34. In signing this Consent Order, Respondent neither admits nor denies the Findings in paragraphs 14 through 24, above. Without any admission of liability, Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent further agrees not to challenge the jurisdiction of the EPA or the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.
35. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent to the terms and conditions of this Consent Order.

36. This Consent Order shall be effective immediately upon receipt by Respondent.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

Date: _____

By: _____

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6925

Northern Arapaho Utilities
Respondent

Date: 9-19-24 By: Lloyd Eggles NABC Chairman
[NAME, TITLE]
[PHONE/EMAIL]
lloyd.eggles@northernarapaho.com