

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED

5/9/2024

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U.S. EPA REGION 8  
HEARING CLERK

<p>IN THE MATTER OF:</p> <p>City of Eagle Butte, Respondent</p>	<p>Docket No. CWA-08-2024-0008</p> <p>ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT</p> <p>Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)</p>
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**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 City of Eagle Butte.
3. This Consent Order pertains to Clean Water Act noncompliance at the City of Eagle Butte Wastewater Treatment Facility (Facility) located in Eagle Butte, on the Cheyenne River Reservation in South Dakota.

**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 Cheyenne River Reservation, as no other governmental entity has been approved to implement it there.
11. On March 4, 2021, EPA issued Respondent individual permit number SD-0020192 (the Permit) under the NPDES program.
12. Respondent’s Permit became effective on July 1, 2021, and expires on June 30, 2026.
13. Respondent’s Permit requires Respondent:
  - a. To maintain discharge monitoring reports, inspection records, and maintenance records, and other records onsite for three or five years, depending on the record,

Part 2.7;

- b. To submit discharge monitoring reports quarterly to EPA no later than the 28<sup>th</sup> of the month following the completed reporting period, Part 2.4;
- c. To limit discharge to Outfall 001, Part 1.2;
- d. To maintain an operation and maintenance manual, Part 3.6;
- e. To properly perform influent monitoring, Part 1.3.4;
- f. To properly perform receiving stream monitoring, Part 1.3.3; and
- g. To properly maintain all portions of the Facility to achieve compliance, Part 3.6.

### **FINDINGS**

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

- 14. The Facility is located on the Cheyenne River Reservation.
- 15. Respondent is a municipality.
- 16. Respondent is a “person” as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 17. Respondent owns the Facility.
- 18. Respondent is the operator of the Facility.
- 19. The facility discharges to an unnamed creek, which is a relatively permanent tributary of Grass Creek.
- 20. Grass Creek is a relatively permanent tributary of the Moreau River.
- 21. The Moreau River is a relatively permanent tributary of the Missouri River.
- 22. The Missouri River is a traditional navigable water.
- 23. The unnamed creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).

24. Grass Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
25. The Moreau River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
26. The Missouri River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
27. On June 27, 2023, EPA inspectors performed and inspection of the Facility and observed:
  - a. Respondent did not maintain discharge monitoring reports, inspection records, and maintenance records onsite, in violation of Permit Part 2.7;
  - b. Respondent had not submitted timely discharge monitoring reports for multiple monitoring periods, in violation of Permit Part 2.4;
  - c. Respondent’s facility experienced a sewer overflow from a manhole that flowed into a swale, then into the unnamed creek described in paragraph 19, in violation of Permit Part 1.2;
  - d. Respondent did not have an operation and maintenance manual available for inspection, in violation of Permit Part 3.6.1;
  - e. Respondent had not been conducting influent sampling properly, in violation of Permit Part 1.3.4; and
  - f. Respondent had not been conducting receiving stream sampling properly, in violation of Permit Part 1.3.3;
28. Further, during the June 27, 2023 inspection EPA inspectors observed the following and raised concern to the Respondent regarding the Permit’s requirement to

properly maintain all portions of the Facility per Permit Part 3.6:

- a. One of the pumps at the No Heart lift station was undersized or not properly maintained, which resulted in frequent failures, backups, and high-level alarms;
- b. A backup pump was not available at the 212 lift station, despite several failures at the 212 lift station; and
- c. No Supervisory Control and Data Acquisition (SCADA) functionality—remote alerts of operation problems—was installed at either the No Heart or 212 lift stations.

29. Since the June 27, 2023 EPA inspection, Respondent has:

- a. Established a recordkeeping system to maintain discharge monitoring reports, inspection records, and maintenance records, and other records;
- b. Submitted all required discharge monitoring reports;
- c. Limited discharge to Outfall 001;
- d. Instituted an operation and maintenance manual and schedule, which includes annual inspection of the entire collection system;
- e. Properly reported influent monitoring and corrected reporting errors for previous influent monitoring ;
- f. Properly reported receiving stream monitoring and corrected previous reporting errors for receiving stream monitoring events;
- g. Replaced two pumps at the No Heart lift station with more durable pumps that have larger intakes that are more clog resistant and added spare pumps onsite;
- h. Have a backup pump available for use at the 212 lift station; and
- i. Engaged an engineer to investigate installation of a SCADA system at the No

Heart and 212 lift stations and applied for grant funding to do so.

**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:

30. Respondent must comply with all terms of the Permit.
31. Respondent must submit quarterly reports to the EPA contact listed in paragraph 35 that contains the following information: (1) copies of all weekly inspection reports required pursuant to Part 3.5.2 of the permit performed during the quarterly reporting period, and (2) a description of the areas of the collection system that were inspected during the quarter, any issues identified during the inspections, and the areas of the collection system that were jettied in the quarter. The first report is due on October 15, 2024, and shall cover the time period from July 1, 2024, to September 30, 2024. Subsequent quarterly reports are due on January 15, 2025 (covering the time period from October 1, 2024 to December 31, 2024), April 15, 2025 (covering the time period from January 1, 2025 to March 31, 2025), and July 15, 2025 (covering the time period from April 1, 2025 to June 30, 2025).
32. Respondent must install a SCADA system at the No Heart and 212 lift stations that can alert Facility operators of operation and maintenance issue within one year of the effective date of the Consent Order. Respondent will provide the contact listed in paragraph 35 quarterly updates on the status of installing the SCADA system (due January 15, April 15, July 15, and October 15 for the previous quarter) until the SCADA system is operational, at which point Respondent will provide a final update notifying EPA of the completion of the SCADA system.

33. 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.

34. All reports and information required by this Consent 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 principal executive officer or ranking elected official:

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.

35. 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 any email is not a feasible manner of providing notifications, Respondent shall contact the following individual by telephone to make alternative arrangements.

Stephanie Passarelli  
Passarelli.stephanie@epa.gov  
(303) 312-6803

36. 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.

37. This Consent Order is not a permit and does not constitute a waiver or modification

of the terms and conditions of any permit.

38. 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.
39. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of their obligation to comply with any applicable federal, state, or local law or regulation.
40. In signing this Consent Order, Respondent neither admits nor denies the Findings in paragraphs 14 through 29, 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.
41. 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.



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

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

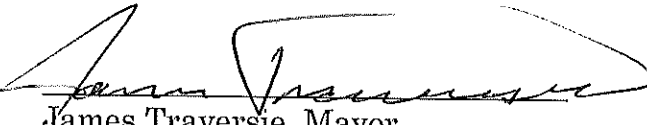
Date: \_\_\_\_\_

By: \_\_\_\_\_

Colleen Rathbone, Manager  
Water Enforcement Branch  
Enforcement and Compliance Assurance Division  
Region 8, U.S. EPA  
1595 Wynkoop Street  
Denver, Colorado 80202  
(303) 312-6925

**City of Eagle Butte**  
Respondent

Date: 5-8-24

By:   
James Traversie, Mayor  
City of Eagle Butte  
rjtraversie@cityofeaglebutte.com