

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED

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U.S. EPA REGION 8  
HEARING CLERK

IN THE MATTER OF:  Northern Arapaho Utilities, Respondent  Great Plains Lagoon Facility	Docket No. CWA-08-2024-0021  ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT  Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)
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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 Northern Arapaho Utilities.
3. This Consent Order pertains to Clean Water Act noncompliance at the Great Plains Lagoon (Facility) located in the community of Arapahoe 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 February 3, 2016, EPA issued Respondent general permit number WYG589102 (2016 Permit) for the Facility under the NPDES program.
12. The 2016 Permit became effective on January 1, 2016, and expired on December 31, 2020, but was administratively continued. The 2021 inspection was conducted under this 2016 Permit.
13. The 2016 Permit required Respondent:
  - a. To inspect the Facility on at least a weekly basis and maintain a log of those inspections in accordance with part 4.3 of the 2016 Permit.
  - b. 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 5.8 of the 2016 Permit.
  - c. To maintain the Facility in proper operation per part 6.5 of the Permit.
  - d. To notify the EPA of any changes to the permitted facility in accordance with part 7.1 of the 2016 Permit.
14. On November 21, 2022, EPA issued Respondent general permit number WYG589102 (2022 Permit) for the Facility under the NPDES program.
15. General permit number WYG589102 became effective on December 1, 2022, and expires on March 31, 2027.
16. Respondent’s 2022 Permit requires Respondent:
  - a. To monitor and report results of any unanticipated discharge of pollutants in accordance with parts 3.2, 5.4.2 and 5.10 of the 2022 Permit.

- b. To inspect the Facility on at least a weekly basis and maintain a log of those inspections in accordance with part 6.5 of the 2022 Permit.
- c. 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 5.10 of the 2022 Permit.
- d. To maintain the Facility in proper operation per part 6.6 of the 2022 Permit.
- e. To notify the EPA of any changes to the permitted facility in accordance with part 7.1 of the 2022 Permit.
- f. To maintain an operations and maintenance (O&M) manual for the Facility per part 6.6 of the 2022 Permit.

### FINDINGS

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

- 17. The Facility is located on the Wind River Reservation.
- 18. The Northern Arapaho Tribe is a federally recognized Indian tribe.
- 19. Respondent is an Indian tribal organization organized under the laws of the Northern Arapaho Tribe.
- 20. Respondent is a “municipality,” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4).
- 21. Respondent is a “person” as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 22. Respondent owns the Facility.
- 23. Respondent is the operator of the Facility.
- 24. The facility discharges to the Little Wind River, which is a relatively permanent tributary of the Wind River, which is a traditional navigable water.
- 25. The Wind River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
- 26. On July 1, 2021, EPA inspectors performed an inspection of the Facility and observed the following alleged conditions:
  - a. Respondent failed to perform proper operations and maintenance procedures as required by part 6.5 of the 2016 Permit including removing overgrown vegetation and animal burrows.

- b. Respondent failed to notify EPA of unauthorized releases in December 2020 and March 2021 in accordance with part 5.8 of the 2016 Permit.
  - c. Respondent failed to operate the lagoon as designed in accordance with part 6.5 of the 2016 Permit.
  - d. Respondent did not notify EPA of substantial changes to the operation of the existing facility in accordance with part 7.1 of the 2016 Permit.
  - e. Respondent failed to keep a copy of the O&M manual as well as records of maintenance operations for the Facility.
27. Since the July 1, 2021 EPA inspection, Respondent has:
- a. Provided logs indicating that weekly inspections are now being conducted at the Facility as required by parts 4.3 of the 2016 Permit.
  - b. A technical assistance provider helped the Respondent develop O&M manuals for the Facility, including an O&M manual for the lift station; however, the O&M manuals have 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:

28. Respondent shall comply with all terms of the 2022 Permit, permit number WYG589102.
29. Respondent shall:
- a. On the effective date of this Consent Order, implement the O&M manuals and schedules for the Facility, including for lift stations and conveyance system, in accordance with part 6.6 of the 2022 Permit. Within 6 months of the effective date of this Consent Order, provide a summary of the O&M that you have performed at the Facility since the implementation of the O&M manuals.
  - b. Within three months from the effective date of this Consent Order, remove overgrown vegetation, trees, and animal burrows. Provide the EPA with the dates the overgrown vegetation, trees and animal burrows were removed from the lagoon dikes and photos showing corrective actions have been completed.
  - c. Within three months from the effective date of this Consent Order, draft and

submit to EPA a plan and schedule with timelines for each milestone to repair damage to cell berms and liners from erosion and ensure that wastewater flows through all four cells as designed. Respondent shall provide the EPA contact listed in paragraph 31 quarterly update reports (January 1st, April 1st, July 1st, and October 1st) until the corrective actions are complete, at which point Respondent shall provide a final update report, to include photos, notifying EPA of the completion of the repairs.

- d. Within six months from the effective date of this Consent Order, fix or replace the lift station pump(s). Provide the EPA with the date the lift station pump(s) were fixed or replaced and photos of completed corrective actions.
  - e. Within three months from the effective date of the Consent Order, develop and provide to the EPA standard operating procedures (SOPs) to ensure that all required self-monitoring and reporting is conducted during any future unauthorized release events, including sanitary sewer overflows. Additionally, ensure the twenty- four (24) hour notice of any noncompliance and five (5)-day written submissions are reported to EPA.
30. 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.
31. 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

32. 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:

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.

33. 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.
34. This Consent Order is not a permit and does not constitute a waiver or modification of the terms and conditions of any permit.
35. 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.
36. 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, tribal, or local law or regulation.
37. In signing this Consent Order, Respondent neither admits nor denies the Findings in paragraphs 17 through 27, 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.

38. 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.
39. 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 Gaggles NABC Chairman  
[NAME, TITLE]  
[PHONE/EMAIL]  
lloyd.gaggles@northernarapaho.com