



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

March 27, 2009

Attn: Eurika Durr  
U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board 1103B  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

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U.S. EPA.  
2009 APR 16 AM 10:11  
ENVIR. APPEALS BOARD

RE: Minor Modification on Remand to Permit for Chukchansi Gold Resort and Casino WWTP  
NPDES Permit No. CA0004009  
Appeal Numbers: NPDES 08-02, 08-03, 08-04 & 08-05

Dear Ms. Durr

Please find enclosed a copy of U.S. EPA Region 9's minor modification document and other relevant documents supplementing the administrative record, actions that were taken in response to the Board's Order denying review in part and remanding in part which was decided on January 14, 2009.

If you have any questions, or need more information please feel to contact me by phone at (415)972-3516 or email at [Sheth.Gary@epa.gov](mailto:Sheth.Gary@epa.gov)

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Sheth".

Gary Sheth  
CWA Standards & Permits Office  
Water Division

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

ENVIR. APPEALS BOARD

2009 APR 16 AM 10:11

RECEIVED  
U.S. E.P.A.

MAR 26 2009

Mr. Samuel Elizondo  
Environmental Director  
Picayune Rancheria of the Chukchansi Indians  
46575 Road 417  
Coarsegold, CA 95448

Re: Minor Modification of NPDES permit for the Chukchansi Wastewater Treatment Plant.

Dear Mr. Elizondo:

We received the letter dated March 5, 2009 signed by Chairman Reid and Secretary Emerick providing consent of the Picayune Rancheria of the Chukchansi Indian Community ("the Tribe") to the modification of the final National Pollutant Discharge Elimination System ("NPDES") permit that was issued to the Tribe on December 4, 2007. Consistent with provisions of 40 CFR Section 122.63, EPA hereby notifies the Tribe of minor modification of the final NPDES permit for the Chukchansi Wastewater Treatment Plant (NPDES Permit No. CA0004009). The modified permit is effective April 1, 2009 as set forth in the enclosed document.

If you have any questions regarding this correspondence, please call Gary Sheth, of my staff, at (415) 972-3516.

Sincerely,

*Alexis Strauss* 26 March 2009  
Alexis Strauss  
Director, Water Division

cc: See distribution list

Enclosure

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**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
MINOR MODIFICATION OF NPDES Permit No. CA0004009**

**issued to:**

The Chukchansi Gold Resort and Casino Waste Water Treatment Plant  
711 Lucky Lane  
Coarsegold, California 93614

**I. Summary:**

Having received the consent of the Picayune Rancheria of the Chukchansi Indian Community ("Tribe"), the United States Environmental Protection Agency Region 9 ("EPA" or the "Region") is hereby modifying the Tribe's final National Pollutant Discharge Elimination System ("NPDES") permit that was issued on December 4, 2007. EPA issued the permit to the Tribe for the discharge of treated domestic wastewater from the Chukchansi Gold Resort and Casino wastewater treatment plant to an unnamed creek on tribal land which flows into Coarsegold Creek. As explained below, this permit is being modified pursuant to an Order Denying Review and Remanding in Part ("Order") issued by the Environmental Appeals Board ("EAB" or "the Board") on January 14, 2009, and consistent with the provisions of 40 C.F.R. Section 122.63. The only modification being made to the permit is to increase the frequency of monitoring of and reporting for total coliform organisms ("TCO") and turbidity, and therefore this action is a "minor modification" of the permit.

**II. Background:**

As noted above, on December 4, 2007, EPA issued a final NPDES permit to the Tribe for the discharge of treated domestic wastewater from the Chukchansi Gold Resort and Casino wastewater treatment plant to an unnamed creek on tribal land which flows into Coarsegold Creek. However, four petitions seeking review of EPA's permit were filed with the EAB. In their collective appeals, the Petitioners argued that EPA's permit decision was deficient in several respects. On January 14, 2009, the Board denied review to the Petitioners on all arguments except for one issue involving the sufficiency of investigation and monitoring for TCO and turbidity imposed in the Permit. The Petitioner sought more frequent monitoring and reporting than what was imposed in the Permit. Specifically, the Petitioner sought monitoring and reporting requirements for TCO and turbidity at levels required by the California Code of Regulations, Title 22, recycled water standards (Title 22) in Section 60321. The EAB found that EPA's explanations for the frequencies imposed in the Permit were inconsistent and substantively lacking and therefore found that the record did not provide a sufficient basis for review. Accordingly, the EAB remanded the Permit to EPA for further consideration of the TCO and turbidity investigation and monitoring requirements imposed therein and to "supplement the record as necessary during the remand process."

### III. Action on Remand:

Upon further consideration, EPA is modifying the permit to include provisions that require more frequent monitoring for TCO and turbidity at frequencies identical to those set forth in California Code of Regulations, Title 22, recycled water standards (Title 22) in Section 60321. This decision is based on the Region's further consideration of factors set forth in the U.S. EPA NPDES Permit Writers' Manual (the Manual). EPA supplemented the record for this matter by including a copy of EPA's evaluation of the factors set forth in the Manual which explains the basis and rationale for the modifications to the Permit.

To implement this modification, the only change made to the Permit is to the monitoring requirements for TCO and turbidity found under the "Monitoring Frequency" column of the table set forth in section A.1.a. of the Permit located on pages 2 and 3 of the permit. Accordingly, after this modification the table located on pages 2 and 3 shall read:

**Table 1. Effluent Limitations**

Effluent Characteristic	Discharge Limitations						Monitoring Requirements	
	Mass limits			Concentration limits			Measurement Frequency	Sample Type
	Average Monthly	Average Weekly	Daily Maximum	Average Monthly	Average Weekly	Daily Maximum		
Flow (MGD) <sup>(5)</sup>	--- <sup>(1)</sup>	---	---	---	---	---	continuous	meter
Ammonia (as N)	---	---	---	(2)	---	(2)	Once/week	24 hr. Composite
Biochemical Oxygen Demand (5-day) <sup>(3)</sup>	13.25 kg/day	19.87 kg/day	26.50 kg/day	10mg/L	15mg/L	20mg/L	Once/week	24 hr. Composite
Total Coliform Bacteria	---	---	---	2.2 MPN/100 ml	N/A	2.2 MPN/100 ml	Once/day	Discrete
Nitrate (as N)	---	---	---	10 mg/L	---	---	Once/week	24 hr. Composite
Total Residual Chlorine (TRC)	---	---	---	0.01mg/L	---	0.02mg/L	Once/week <sup>(4)</sup>	Discrete
Settleable Solids	---	---	---	1 ml/L	---	2 ml/L	Once/week	Discrete
Suspended Solids <sup>(3)</sup>	13.25 kg/day	19.87 kg/day	26.50 kg/day	10 mg/L	15mg/L	20mg/L	Once/week	24 hr. Composite
Copper <sup>(7)</sup>	0.019 kg/day	---	0.037 kg/day	14.6 ug/L	---	29.4 ug/L	Once/week	24 hr. Composite

Zinc <sup>(7)</sup>	0.15 Kg/day	---	0.31 kg/day	116 ug/L	---	233 ug/L	Once/week	24 hr. Composite
Turbidity	---	---	---	2NTU	---	5NTU	continuous	Discrete
Temperature	No change of more than five (5) degrees Fahrenheit in the naturally receiving water ambient temperature. See narrative water quality criteria for temperature at A.2.1.						Once/day	Discrete
Total Phosphorous (as P)	(6)	---	(6)	(6)	---	(6)	Once/week	24 hr. Composite
Electrical Conductivity	(6)	---	(6)	(6)	---	(6)	Once/week	Discrete
Oil and Grease	(6)	---	(6)	(6)	---	(6)	Once/week	Discrete
Whole Effluent Toxicity, (WET) Chronic	---	---	---	(6)	---	(6)	Once /year	24 hr. Composite
Priority Pollutants	---	---	---	(6)	---	(6)	Once/year	24 hr. Composite
pH	Not less than 6.5 standard units and not greater than 8.5 standard units. The discharge shall not cause the pH of the receiving water to change more than 0.5 standard units.						Once/day	Discrete

- (1) The permittee shall minimize the discharge of advanced treated wastewater to surface waters at all times by maximizing recycling and re-use of treated wastewater
- (2) Ammonia effluent limitations are pH and temperature dependent and are contained in Appendix B and C.
- (3) Both the influent and the effluent shall be monitored. The arithmetic mean of the Biochemical Oxygen Demand (5-day) by concentration, for effluent samples collected in a period of 30 consecutive calendar days shall not exceed 15 percent of the arithmetic mean of the values, by concentration, for influent samples collected at approximately the same times during the same period.
- (4) TRC shall be monitored at daily intervals to verify adequate removal of chlorine prior to discharge to the receiving water or reuse, when chlorine is used to disinfect the effluent.
- (5) Flow is defined as "Maximum annual dry weather design capacity" as defined in the Permit.
- (6) Monitoring and reporting required. No limit set at this time.
- (7) The criteria limits are expressed as ug/L total recoverable. The limits are hardness dependent and based on a hardness of 220 mg/L CaCO<sub>3</sub>. The limits will vary as the hardness of the effluent varies.

EPA modified the Permit in accordance with the procedures set forth in 40 C.F.R. Section 122.63. Specifically, these procedures provide that "upon the consent of the permittee," EPA may make "minor modifications" to a permit without following the requirements for public comment set forth in the "Procedures for Decisionmaking," set forth in 40 C.F.R. Part 124. Modifying a permit to require more frequent monitoring and reporting by the permittee is classified as a "minor modification." 40 C.F.R. Section 122.63(b). Consequently, given that the Tribe consented to this modification, and the modification to the Permit increasing the frequency of TCO and turbidity reporting and monitoring are not subject to the public comment procedures set forth in 40 C.F.R Part 124, this modification is effective on April 1, 2009.

#### IV. Review

As provided by the Board, "If petitioners or other participants are not satisfied with the Region's explanation on remand, petitioners or other participants with standing may appeal the Region's determination to this Board pursuant to 40 C.F.R. Section 124.19. Any appeal shall be limited to the issue being remanded and any issues that arise as a result of any modification the Region makes to its permit decision on remand."

Accordingly, in accordance with the provisions of 124.19, petitioners and other parties with standing have 33 days from the date of this notice to file a petition for appeal with the Board. As noted by the Board, an appeal of the remand decision is required to exhaust administrative remedies. 40 C.F.R. Sections 124.19(f)(1)(iii), 124.20(d).

For additional information, please visit our website or contact:

Gary Sheth at:

(415) 972-3516 or at [sheth.gary@epa.gov](mailto:sheth.gary@epa.gov)

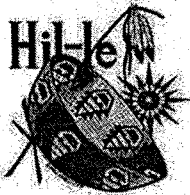
Or by mail at

EPA Region IX (WTR-5)

75 Hawthorne Street

San Francisco, CA 94105

Website: <http://www.epa.gov/region09/water/npdes/pubnotices.html>



Picayune Rancheria  
of the

# CHUKCHANSI INDIANS

46575 Road 417 • Coarsegold, CA 93614 • (559) 683-6633 • FAX (559) 683-0599

March 5, 2009

U.S. EPA Region 9  
75 Hawthorne St.  
San Francisco, CA 94105  
Attention: Joann Asami

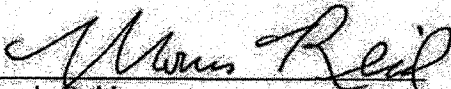
Re: NPDES Permit CA0004009


Dear U.S. EPA:

This letter shall serve as the consent of the Picayune Rancheria of the Chukchansi Indians, the applicant in the above-referenced permit, to the minor modifications made to the above-referenced permit. We consent to the minor modifications with the understanding that U.S. EPA will proceed with processing the permit pursuant to the provisions of 40 C.F.R. 122.63, pertaining to Minor Modifications of Permits, and that notice of the minor modifications will be provided only to those parties whom the U.S. EPA determines require notice.

Sincerely yours,

**THE PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS**

  
\_\_\_\_\_  
Morris Reid  
Chairman

  
\_\_\_\_\_  
Mark Emerick  
Secretary



## MEMORANDUM

DATE: March 10, 2009

SUBJECT: Further Consideration of Permit Conditions addressing the Investigation and Monitoring of Total Coliform Organisms (TCO) and Turbidity.  
NPDES Permit No. CA0004009

FROM: Gary Sheth *GKS*

TO: Record

### Background

The Environmental Appeals Board United States Environmental Protection Agency Washington, D.C. (EAB) issued an order denying review in part and remanding in part petitions seeking review of the above-referenced NPDES Permit issued to the Chukchansi Gold Resort and Casino. Specifically, the EAB remanded to the Environmental Protection Agency, Region IX (the Region) the above referenced NPDES Permit to further consider the TCO and turbidity investigation and monitoring requirements and supplement the record as necessary during the remand process.<sup>1</sup>

### Review

After further consideration of the TCO and turbidity investigation and monitoring requirements, the Region is modifying the Permit monitoring frequencies for TCO and turbidity to make these requirements identical to those set forth in California Code of Regulations, Title 22, recycled water standards (Title 22) in Section 60321.<sup>2</sup> Specifically, the Region is modifying the permit to increase the frequency of monitoring for TCO from weekly to daily, and to increase the frequency of monitoring for turbidity from daily to continuous.

The decision to increase the frequency of monitoring in the permit is based on the Region's further consideration of factors set forth in the U.S. EPA NPDES Permit Writers' Manual<sup>3</sup> (the Manual). The Manual provides that the goal in setting the frequency of monitoring, which is done on a case-by-base basis, is to "detect most events of noncompliance without requiring

<sup>1</sup> In Re Chukchansi Gold Resort and Casino Wastewater Treatment Plant. NPDES Appeals Nos. 08-02, 08-03, 08-04 & 08-05. Order Denying Review in Part and Remanding in Part. Before Environmental Appeals Judges Edward E. Reich, Kathie A. Stein, and Anna L. Wolgast. Decided January 14, 2009.

<sup>2</sup> See Page 600 of Barclays California Code of Regulations. Register 2000, No. 44; 11-3-2000. This document is found in the Administrative Record at Page 1936.

<sup>3</sup> See Pages 119- 122 of the U.S. EPA NPDES Permit Writers' Manual. EPA-833-B-003. December 1996. This document is found in the Administrative Record at Pages 1867-1870.

needless or burdensome monitoring.” See, Section 7.1.2. Establishing the frequency of monitoring is often related to the variability of the concentration of effluent contaminants, i.e., in general, greater variability in the effluent often requires greater frequency in monitoring. When monitoring frequencies are being set for new facilities, where there is no data that would reflect variability of effluent concentrations, the Manual suggests that other factors be considered when establishing appropriate monitoring frequencies.<sup>4</sup> These other factors include the following: (1) Design capacity of treatment facility, (2) Type of treatment method used, (3) Post compliance record/history, (4) Cost of monitoring relative to discharger’s capabilities, (5) Frequency of the discharge, (6) Number of monthly samples used in developing permit limit, and (7) Tiered Limits. Id.

As directed by the EAB, the Region has further considered the requirements for monitoring of TCO and turbidity as set forth in the permit; and after considering all of the factors set forth in the Manual that are applicable to the Chukchansi permit, has concluded that increasing the frequency of monitoring of TCO and turbidity is appropriate. The Region’s conclusion is largely based on factor 4 above, “Cost of monitoring relative to discharger’s capabilities,” which directs permit writers to consider the cost of monitoring relative to the discharger’s ability to pay when setting the frequency of monitoring. As noted above, the Chukchansi facility is currently recycling water instead of discharging it, and is already monitoring TCO and turbidity at the Title 22 frequencies, albeit for a different purpose, and at fewer sampling locations. Therefore, requiring the discharger to monitor at the frequencies set forth in Title 22 for the purpose of monitoring surface water discharge, would result in only one additional sampling location than what is currently being monitored. This requirement will not result in much increase in cost, relative to the resources available to the discharger, i.e., these costs will be borne by an owner/operator of a facility that will largely serve a casino.

### **Conclusion**

Because the additional cost of monitoring at one additional location at the same Title 22 frequencies relative to the discharger’s capabilities is marginal, EPA believes that the discharger should monitor TCO and turbidity at the frequency prescribed by Title 22, rather than the less frequent monitoring required in the permit issued on December 4, 2007.

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<sup>4</sup> The Manual suggests that for new facilities permit writers should consider information from similar dischargers. Consequently, since the Chukchansi facility was a new discharger, the Region considered discharge information from three similar existing wastewater treatment facilities located in the same general area in setting the frequency of monitoring that was included in the final permit issued on December 4, 2007. Copies of these three other permits can be found in the Administrative Record at Pages 1941-2065.