



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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NOV 21 2011

Ref: 8P-W-WW

Via the Central Data Exchange and Overnight mail to:

Eurika Durr
Clerk of the Board
United States Environmental Protection Agency
Environmental Appeals Board
Colorado Building
1341 G Street, N.W.
Suite 600
Washington, DC 20005

Via U.S. Mail

Mr. Tom Fredericks
Fredericks, Peebles & Morgan, LLP
1900 Plaza Drive
Louisville, CO 80027

Pastor Elise Packineau
P.O. Box 496
New Town, ND 58763

Mr. Sparsh Khandeshi
Environmental Integrity Project
1 Thomas Circle
Suite 900
Washington, DC 20005

Mr. James Stafslie
P.O. Box 0094
Makoti, ND 58756

Re: In re: MHA Nation Clean Fuels Refinery
NPDES Permit Number: ND-0030988
Consolidated Appeal Numbers: NPDES 11-02
NPDES 11-03
NPDES 11-04

Dear Ms. Durr, Mr. Fredericks, Mr. Khandeshi, Pastor Packineau, and Mr. Stafslie:

In accordance with 40 C.F.R. § 124.19(d), the United States Environmental Protection Agency (EPA) Region 8 (Region) is providing this notification to the Environmental Appeals Board (Board) and interested parties that it is withdrawing portions of National Pollutant Discharge Elimination System Permit (NPDES) number ND-0030988 (Final Permit) that the Region issued to the Three Affiliated Tribes (MHA Nation) on August 4, 2011. The Region will address these withdrawn portions and submit any revised provisions as draft permit conditions for public comment.

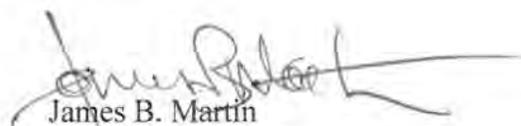
40 C.F.R. § 124.19(d) authorizes the Regional Administrator upon notification to the Board and any interested parties to withdraw portions of an NPDES permit any time prior to a decision by the Board to grant or deny review of a permit decision. 40 C.F.R. § 124.19(d). As the Board has not yet rendered a decision to grant or deny review of this permit decision, EPA Region 8 is hereby withdrawing the permit portions with respect to the effluent limitations listed in Final Permit Section 1.3.3 Effluent Limitations – Outfall 002 for: BOD (biochemical oxygen demand), COD (chemical oxygen demand), TSS (total suspended solids), total chromium, phenolic compounds, and oil and grease. The Region will prepare new draft effluent limitations under 40 C.F.R. § 124.6. The new effluent limitations be will subject to public notice and comment and may be appealed pursuant to 40 C.F.R. § 124.19.

After the Region issued the Final Permit on August 4, 2011, three separate petitioners appealed the permit to the Board. On September 30, 2011, the Board issued an order consolidating the cases and extending the time for the Region to respond to all petitions until December 16, 2011. In the appeal of the Environmental Awareness Committee (EAC) (NPDES 11-02), the EAC asserts that the Region established effluent limitations in the Final Permit that do not comply with the requirements of 40 C.F.R. § 419 (Petroleum Refining Point Source Category). Although this issue was not raised during the public comment period on the draft permit as required by 40 C.F.R. 124.19(a), upon receipt of the EAC petition, the Region reviewed its calculations regarding the effluent limitations to determine whether the permit contained the appropriate requirements. For the specific effluent limitations identified above, the Region determined the limitations were incorrect.

The Region is only withdrawing and planning to re-propose the provisions of the Final Permit set forth above and is not seeking comment on other permit provisions. After the public comment period closes, the Region will consider the comments received, provide written responses to significant comments, and develop final permit conditions. Once the Region issues the final permit conditions, any person with standing can appeal those permit conditions to the Board. With respect to the remaining allegations in the consolidated cases NPDES 11-02, NPDES 11-03, and NPDES 11-04, that are not addressed by this notice, the Region intends to respond by December 16, 2011, in accordance with the September 30, 2011 order of the Board.

If you have any questions regarding this notice, please contact Colleen Gillespie, in our NPDES program at (303) 312-6133, or Erin Perkins, in our Office of Regional Counsel, at (303) 312-6922.

Sincerely,


James B. Martin
Regional Administrator

