



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2013 JUL 15 AM 11:43

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2011-0040

IN THE MATTER OF:

THE CITY OF DUPREE, SOUTH DAKOTA

Dupree, South Dakota

NPDES Permit No. SDG589116

Respondent

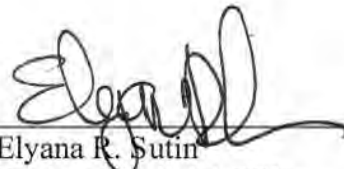
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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 15th Day of July, 2013


Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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In the Matter of)	Docket No. CWA-08-2011-0040
)	
The City of Dupree, South Dakota)	CONSENT AGREEMENT
Dupree, South Dakota)	
NPDES Permit No. SDG589116,)	
)	
Respondent)	

FILED
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HEARING CLERK

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, City of Dupree (Respondent), by their undersigned representatives, hereby consent and agree as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. On September 30, 2011, Complainant filed an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) under section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g), alleging certain violations of section 301 of the Act, 33 U.S.C. § 1311, and of a condition or limitation of a permit issued under section 402 of the Act, 33 U.S.C. § 1342. The Complaint proposed the assessment of a Class I civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or the Consent Agreement. Respondent further waives its right to appeal the Final Order.

4. Respondent has returned the wastewater treatment facility to compliance with the violations described in the Complaint of the applicable regulations, its National Pollutant Discharge Elimination System permit, and the Act by fully complying with the terms and conditions set forth in the Findings of Violation and Order for Compliance (Docket No. CWA-08-2011-0016), dated June 17, 2011.

5. This Consent Agreement contains all terms of the settlement agreed to by the parties. Upon incorporation into a Final Order, this Consent Agreement applies to and is binding upon Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 7 has been paid. This Consent Agreement upon incorporation into a Final Order shall constitute full civil settlement of the violations alleged in the Complaint.

6. Respondent qualifies for a partial ability-to-pay reduction based on a determination by EPA following a thorough examination of the City of Dupree's financial information consistent with *EPA's Policy on Civil Penalties, A Framework for Statute-Specific Approaches to Penalty Assessments*, and *Ability to Pay Case Law Outline*.

7. Pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), taking into account the seriousness of the violation, the population at risk, the Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **THREE THOUSAND DOLLARS (\$3,000)**.

TERMS OF SETTLEMENT

8. Respondent consents, for the purpose of settlement, to the issuance of a Final Order in this matter and agrees to pay the civil penalty cited in paragraph no. 7 above as follows:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by U.S. Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case for this amount, payable to "**Treasurer, United States of America,**" to:

If sent by regular U.S. mail:

U.S. EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**If sent by any commercial
overnight carrier:**

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

If sent by transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message
should read "D 68010727 Environmental
Protection Agency"

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Amy Swanson
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day of the first payment, 30 days of interest accrues; interest will accrue back to the final order date to the date of receipt for any subsequent late installment payments).
- d. In addition to the accrual of interest specified in (c) above, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if any penalty payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

GENERAL PROVISIONS

9. This Consent Agreement shall not relieve Respondent of its obligation to comply with the Act and its implementing regulations. Payment of the penalty in this matter shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

10. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of the Consent Agreement.

11. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a Final Order.

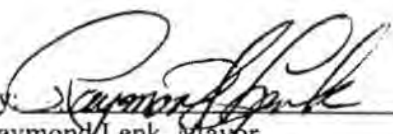
13. Each party shall bear its own costs and attorney fees in connection with this matter.

14. Failure by Respondent to comply with any of the terms of the Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

15. The Consent Agreement, upon incorporation into a Final Order by the presiding officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.


CITY OF DUPREE,
Respondent.

Date: July 1, 2013


By: 
Raymond Lenk, Mayor

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: 6/26/13

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 06/26/13


Gwenette C. Campbell, Unit Chief
NPDES Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **THE CITY OF DUPREE, SOUTH DAKOTA; DOCKET NO.: CWA-08-2011-0040**. The documents were filed with the Regional Hearing Clerk on July 15, 2013.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mailed on July 15, 2013, to:

Eric H. Bogue
Bogue & Bogue, LLP
Butler Insurance Building, Suite 2
104 West 1st Street/P. O. Box 250
Faith, SD 57626-0250
boguelaw@faithsd.com

e-mailed to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8RC)
Denver, CO 80202

and:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

July 15, 2013



Tina Artemis
Paralegal/Regional Hearing Clerk