

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2019 SEP -3 PM 4: 19

IN THE MATTER OF:)
)
)
Blackfeet Solid Waste and)
Utilities Management,)
)
Respondent.)

Docket No. **CWA-08-2019-0005**

**ADMINISTRATIVE ORDER ON
CONSENT**

FILED
EPA REGION VIII
REARND: FRK

INTRODUCTION

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Blackfeet Solid Waste and Utilities Management (BSW), an Indian tribal organization of the Blackfeet Tribe (Tribe) of the Blackfeet Indian Reservation of Montana (Reservation), to carry out the goals of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

STATUTORY AUTHORITY

The following FINDINGS OF FACT AND CONCLUSIONS OF LAW are made and ORDER issued pursuant to the authority vested in the Administrator of the EPA by section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), and as further delegated to the undersigned official. The Consent Order and the compliance agreed to herein are based on the FINDINGS OF VIOLATION of section 301 of the CWA, and of any permit condition or limitation implementing section 402 of the CWA.

PARTIES BOUND

This Consent Order shall apply to and be binding upon the EPA and upon the BSW, the BSW’s officers, employees, agents, successors, and assigns. The signatories to this Consent Order certify they are authorized to execute and legally bind the parties they represent to this

Consent Order. No change in the ownership or control of the BSW, including without limitation, any change in ownership or operations of the facilities operated and maintained by the BSW referenced in this Consent Order shall alter the BSW's responsibilities under this Consent Order unless the EPA, the BSW, and the successor in interest agree in writing to allow the new successor to assume such responsibilities. Additionally, no later than 30 calendar days prior to any such transfer, the BSW shall notify the EPA of the transfer by the method described in paragraph 28 of this Consent Order.

STATEMENT OF THE PARTIES

The following FINDINGS OF FACT AND CONCLUSIONS OF LAW are made by the EPA and the BSW. In signing this Consent Order, the BSW neither admits nor denies the FINDINGS OF VIOLATION. As such, and without any admission of liability, the BSW consents to issuance of this Consent Order and agrees to abide by all its conditions. The BSW waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which BSW may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The BSW further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND CONCLUSIONS OF LAW below in any proceeding to enforce this Consent Order or in any action under it.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

1. Section 301(a) of the CWA, 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 CWA, including section 402 of the CWA, 33 U.S.C. § 1342.

2. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program under which the EPA may authorize discharges into navigable waters, subject to specific terms and conditions.
3. Effective January 1, 2016, the EPA issued the NPDES General Permit for Wastewater Lagoons in Indian Country MTG589### (General Permit) authorizing, in part, operators of wastewater treatment lagoons located on the Reservation to discharge to waters of the United States in accordance with the conditions set forth in the General Permit.
4. The Tribe is a federally recognized tribe under section 104 of the Federally Recognized Indian Tribe List Act, now codified at 25 U.S.C. § 5131, and 84 Fed. Reg. 1200, 1201 (February 1, 2019).
5. The BSW is an Indian tribal organization authorized under the laws of the Tribe.
6. The BSW is a “municipality” as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2, for federal enforcement purposes.
7. The BSW is a “person” as that term is defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, for federal enforcement purposes.
8. The BSW operates and maintains multiple wastewater treatment facilities on behalf of the Tribe throughout the Reservation.
9. The BSW operates and maintains the Starr School Lagoon Wastewater Treatment Facility (Facility).
10. The Facility is a wastewater treatment facility consisting of a sanitary sewer collection system and wastewater treatment lagoons.
11. On December 6, 2016, the EPA issued the BSW coverage authorization under the General Permit for the Facility under permit number MTG589101. This coverage began

on December 6, 2016, expires on December 31, 2020, and has authorized no discharge (except as noted in paragraph 18, below).

12. On May 17, 2017, an EPA Inspector and an EPA contractor (Inspectors) conducted an inspection of the Facility, during which the Inspectors had conversations with an operator of the Facility, made field observations, performed a document review, and reviewed information from the EPA's Integrated Compliance Information System (ICIS).
13. During the May 17, 2017 inspection at the Browning Lagoon Wastewater Treatment Facility, the Inspectors observed and gathered evidence of the following:
 - a. There was overgrown vegetation on the dikes surrounding each cell;
 - b. Animal burrows were present in the dikes; and
 - c. Weekly inspections were not being performed and recorded.
14. During the May 17, 2017 inspection, the Facility's operator informed the Inspectors the Facility discharges four to five times a year.
15. The Facility discharges wastewater into Cut Bank Creek.
16. The BSW has not performed any self-monitoring or reporting of the unauthorized discharges.
17. The General Permit requires the BSW:
 - a. to keep the dikes mowed on a regular basis during the growing season or as needed (e.g., keep growth below 6" in height), General Permit Part 6.5.5;
 - b. to promptly remove burrowing animals from the dikes and promptly repair damage to the dikes cause by burrowing animals, General Permit Part 6.5.2 and 6.5.3; and

- c. to inspect on at least a weekly basis and maintain records of the inspections, General Permit Part 4.3.
18. The General Permit authorizes no discharge from this Facility except in accordance with the bypass provisions of the General Permit. General Permit Part 4.1.
 19. The General Permit requires BSW to report noncompliance to EPA within 24 hours. General Permit Parts 5.8.1 through 5.8.3.
 20. The General Permit requires self-monitoring and reporting of unauthorized discharges. General Permit Part 4.2 and 5.4.3.

FINDINGS OF VIOLATION

21. The BSW has not kept the Facility's dikes mowed on a regular basis during the growing season or as needed (e.g., keep growth below 6" in height), in violation of Part 6.5.5 of the General Permit.
22. The BSW has not promptly removed burrowing animals from the dikes at the Facility or promptly repaired damaged to the dikes cause by burrowing animals, in violation of Parts 6.5.2 and 6.5.3 of the General Permit.
23. The BSW has not inspected the Facility on a weekly basis and maintained records of the inspections, in violation of Part 4.3 of the General Permit.
24. The BSW has discharged pollutants from the Facility, in violation of Part 4.1 of the General Permit.
25. The BSW has not provided twenty-four-hour notice of noncompliance reporting, in violation of Parts 5.8.1 through 5.8.3 of the General Permit.
26. The BSW has not self-monitored or reported unauthorized discharges at the Facility, in violation of Part 4.2 and 5.4.3 of the General Permit.

ORDER

27. Effective immediately, the BSW shall comply with all requirements of the General Permit applicable to the Facility.

28. All information and notices submitted by BSW to the EPA as required by this Consent Order shall be submitted to:

Kenneth Champagne
U.S. EPA Region 8
Montana Operations Office
10 West 15th Street, Suite 3200
Helena, Montana 59626

29. All information submitted by the BSW to the EPA as required by this Consent Order shall include the following certification statement, signed and dated by a duly authorized representative of the BSW:

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.

30. The BSW shall immediately start conducting and documenting weekly inspections of the Facility, as required by Part 4.3 of the General Permit.

31. Within 90 days of the effective date of this Consent Order, the BSW shall provide the EPA copies of weekly lagoon self-inspections performed over the last six months at the Facility. The BSW shall also provide the EPA copies of inspection reports on a monthly basis until the EPA informs the BSW in writing that such monthly submission is no longer necessary.

32. Within 30 days of the effective date of this Consent Order, the BSW shall mow the vegetation on the dikes surrounding each cell at the Facility to below 6" in height and submit to the EPA photographic proof and the date(s) of such action.
33. Within 30 days of the effective date of this Consent Order, the BSW shall remove the animal burrows from the dikes surrounding each cell at the Facility, repair the damage to the dikes, and submit to the EPA photographic proof and the date(s) of such actions.

GENERAL PROVISIONS

34. The BSW shall fully implement each item of this Consent Order. The BSW's failure to implement all requirements of this Consent Order in the manner and time period required shall be deemed a violation of this Consent Order and may subject the BSW to penalties as provided under section 309 of the CWA, 33 U.S.C. § 1319.
35. This Consent Order does not constitute a waiver, suspension, or modification of any requirement of the CWA, the General Permit, or any individual discharge permit. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.
36. This Consent Order may be amended or modified by written agreement of the EPA and the BSW.
37. This Consent Order shall be effective upon receipt of the fully-executed copy by the BSW.
38. This Consent Order shall terminate upon notice by the EPA.

IT IS SO AGREED AND ORDERED:

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8**

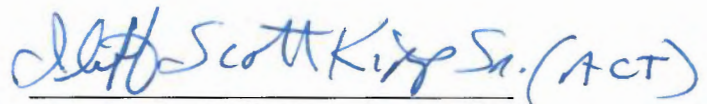
Date: 9/3/19



Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**BLACKFEET SOLID WASTE AND
UTILITIES MANAGEMENT,
Respondent.**

Date: 8-21-19



Timothy Davis, Chairman
Blackfeet Tribe