

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2018 JUL 31 PM 12:03

IN THE MATTER OF:)
)
The Rosebud Sioux Tribe-Sewer Revenue)
Department,)
)
)
Respondent.)

Docket No. ~~CWA-08-2018-0012~~
**ADMINISTRATIVE ORDER ON
CONSENT**
Proceeding under section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

FILED
EPA REGION VIII
HEARING CLERK

INTRODUCTION

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Rosebud Sioux Tribe-Sewer Revenue Department (RST SRD), a department of the Rosebud Sioux Tribe, 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 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 Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Consent Order and the compliance agreed to herein are based on the findings of violation of sections 301 and/or 402 of the CWA, and of any permit condition or limitation implementing such sections of the CWA.

PARTIES BOUND

This Consent Order shall apply to and be binding upon the EPA and upon the RST SRD, its officers, employees, agents, successors and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or operation of the facilities referenced herein operated and maintained by the RST SRD shall alter the RST SRD's responsibilities under this Consent Order unless the EPA, the RST SRD, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, 30 calendar days prior to such transfer, the RST SRD shall notify the EPA pursuant to paragraph 43 of this Consent Order.

STATEMENT OF THE PARTIES

The following FINDINGS OF FACT AND CONCLUSIONS OF LAW are made solely by the EPA. In signing this Consent Order, the RST SRD neither admits nor denies the FINDINGS AND CONCLUSIONS OF LAW. As such, and without any admission of liability, the RST SRD consents to issuance of this Consent Order and agrees to abide by all of the conditions herein. The RST SRD waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the RST SRD 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 section 309(a)(3) Consent Order under the Administrative Procedure Act, 5 U.S.C. 701-706. The RST SRD 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 this Consent Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

1. The RST SRD is a tribal organization authorized under the laws of the Rosebud Sioux Tribe (Tribe), a federally recognized tribe under section 104 of the Federally Recognized Indian Tribe List Act, 25 U.S.C. § 479a, and 81 Fed. Reg. 5019, 5022 (January 29, 2016).
2. The RST SRD 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.
3. The Rosebud Sioux Tribe-Sewer Revenue Department 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.
4. The RST SRD provides wastewater treatment services to the communities located within the exterior boundaries of the Rosebud Sioux Reservation (Reservation).
5. The RST SRD operates and maintains throughout the Reservation on behalf of the Tribe multiple wastewater treatment facilities consisting of a sanitary sewer collection system and a wastewater treatment lagoon including the Community of Rosebud Wastewater Treatment Facility (Facility).
6. The Facility is a “point source” within the meaning of section 502(14) of the CWA, U.S.C. § 1362(14).
7. The Facility discharges into Rosebud Creek (Creek), which flows into the Little White River, a tributary of the White River which is a tributary of the Missouri River. The Missouri River and its tributaries constitute “waters of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, are navigable waters within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

8. Wastewater is a “pollutant” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, 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.

Discharge Authorization

10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program under which the EPA may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.
11. Effective January 1, 2016, the EPA issued NPDES General Permit for Wastewater Lagoons in Indian Country SDG589### authorizing, in part, operators of wastewater treatment lagoons located on the Rosebud Indian Reservation to discharge to waters of the United States in accordance with the conditions set forth in the Permit.
12. The EPA issued the Tribe coverage authorization under the general permit for the Facility on April 5, 2016, wherein the Facility was authorized to discharge, subcategory C (semi-annual monitoring), and assigned permit number SDG-589608 (Permit). In accordance with the Notice of Intent signed by the Tribe on March 17, 2016 , the Permit authorizes the Tribe to only discharge from the secondary cell of the lagoon located at 43°16’08.89” N; 100°50’05.82” W.
13. Part 5.8.1 of the Permit requires the permittee to report to the EPA and the Tribe, no later than twenty-four (24) hours from the time the permittee first became aware of the

circumstances, any noncompliance which may endanger human health and the environment.

14. “Any unanticipated bypass which exceeds any effluent limitation in the permit” and “any unauthorized release, including sanitary sewer overflow” discussed in Parts 5.8.2.1 and 5.8.2.2 of the Permit, respectively, are within the meaning of “noncompliance” for purposes of Part 5.8.1 of the Permit.
15. Part 5.8.3 of the Permit requires the permittee to provide a written submission containing the information set forth in Parts 5.8.3.1 through 4 to the EPA and the Tribe within five days of the time that the permittee becomes aware of the circumstances set forth in Part 5.8.1.
16. Part 6.5 of the Permit requires the permittee at all times to properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee.
17. Part 6.7.3 of the Permit prohibits any unanticipated bypass which exceeds any effluent limitation in the Permit.
18. Part 8.3 of the Permit defines “bypass” as “the intentional diversion of waste streams from any portion of a treatment facility.”
19. Part 8.15 of the permit defines “unauthorized release” as “the discharge of water from the lower end of the treatment or containment system through a release structure or over or through retention dikes when the permit required “No Discharge.” Pursuant to Part 5.8.2.2, an unauthorized release includes sanitary sewer overflows.

FINDINGS OF VIOLATION

April 2017 Unauthorized Release

20. On April 17, 2017, the EPA received a citizen's complaint via telephone concerning raw sewage discharging from the Facility's lift station, located at 43.237426 N, 100.857289, W along North Spotted Tail Lane in the Town of Rosebud.
21. The EPA contacted the Rosebud Sioux Tribe-Sewer Revenue Department on April 17, 2017, and learned that the lift station had two pumps but one pump had not worked for several years.
22. The functioning pump failed on April 13, 2017, resulting in raw sewage discharging from the lift station directly into the Creek through April 20, 2017.
23. The unanticipated bypass and/or unauthorized release resulted in approximately 67,500 gallons per day of untreated water being discharged to the Creek.
24. The unanticipated bypass and/or unauthorized release endangered human health and/or the environment.
25. The unanticipated bypass and/or unauthorized release of untreated wastewater from the Facility to the Creek from April 13 through April 20, 2017, constitutes noncompliance within the meaning of Part 5.8 of the Permit and a violation of Part 6.7.3 of the Permit and the CWA.
26. RST SRD failed to submit the notice of noncompliance to the EPA and the Tribe within 24 hours of learning of the Facility's unanticipated bypass and/or unauthorized release on April 13, 2017, in violation of Parts 5.8.1 and/or 6.7.2.2 of the Permit and the CWA.

27. The RST SRD failed to submit a written submission describing the of the noncompliance within five days of learning of the Facility's unanticipated bypass and/or unauthorized release on April 13, 2017, in violation of the Part 5.8.3 of the Permit and the CWA.

June 2017 Unauthorized Release

28. On June 29, 2017, the EPA was informed by the RST SRD of a separate unanticipated bypass and/or unauthorized release from the Facility's lift station.

29. On June 29, 2017, broken hardware prevented the pump from seating properly in the wet well. The septic trucks did not have sufficient pumps to pump the 30-foot wet well. They were able to pump it down to remove the hardware, but had to discharge less than 3,000 gallons to the Creek earlier in the afternoon.

30. The unanticipated bypass and/or unauthorized release of untreated wastewater from the Facility to the Creek on June 29, 2017, endangered human health and/or the environment.

31. The unanticipated bypass and/or unauthorized release of untreated wastewater from the Facility to the Creek on June 29, 2017, constitutes noncompliance within the meaning of Part 5.8 of the Permit and a violation of Part 6.7.3 of the Permit and the CWA.

32. The RST SRD failed to submit a written submission describing the noncompliance within five days of learning of the Facility's unanticipated bypass and/or unauthorized release on June 29, 2017 in violation of the Permit Part 5.8.3 and the CWA.

July 2017 Unauthorized Release

33. On July 17, 2017, the EPA was informed by the RST SRD of a separate unanticipated bypass and/or unauthorized release from the Facility's lift station. A force main rupture on July 10, 2017, resulted in 6,000 gallons of wastewater discharging onto the ground inside the lift station fence. Some of the discharged water flowed into the Creek.

34. The unanticipated bypass and/or unauthorized release of untreated wastewater from the Facility to the Creek on July 10, 2017, endangered human health and/or the environment.
35. The unanticipated bypass and/or unauthorized release of untreated wastewater from the Facility to the Creek on July 10, 2017, constitutes noncompliance within the meaning of Part 5.8 of the Permit and a violation of Part 6.7.3 of the Permit and the CWA.
36. The RST SRD failed to submit the notice of noncompliance to the EPA and the Tribe within 24 hours of learning of the Facility's unanticipated bypass and/or unauthorized release on July 17, 2017, in violation of Part 5.8.1 of the Permit and the CWA.

ORDER

37. Effective immediately, the RST SRD shall comply with all requirements of the Permit including, but not limited to, Parts 6.7 (discharge only in accordance with Permit bypass provisions); 5.8.1 (report noncompliance which may endanger health or the environment within 24 hours to EPA, and the Rosebud Sioux Tribe Environmental Protection Agency (RST EPA) on behalf of the Tribe); 5.8.2 (report any unauthorized discharge by telephone the first workday following the incident to EPA and the RST EPA); 5.8.3 (submit a written description of the unauthorized discharge within five days to EPA and the RST EPA); and 6.5 (properly operate and maintain all facilities and systems of control).
38. Effective immediately the RST SRD, shall sample for the effluent characteristics set forth in part 3.2.1.2 of the Permit (Sub-category C-Semi-annual/periodic monitoring) above and below the location where the discharge enters any waterway within 24 hours of any unanticipated bypass or unauthorized release. Records of monitoring for all sampling performed under this paragraph shall be conducted in accordance with part 5.6 of the

Permit and sampling results shall be submitted to the EPA within 7 days of receiving the results.

39. Within 30 days of the effective date of the Consent Order, the RST SRD shall submit to the EPA and the RST EPA a written verification that the unanticipated bypasses and/or unauthorized releases of April 17, June 29 and July 17, 2017, respectively, have ceased and the lift station repairs completed, including the pumps and electric motors. The written verification shall be accompanied by photographs, invoices and other information documenting that the work has been successfully completed and the impacted area remediated to the extent practicable.
40. Within 30 days of the effective date of the Consent Order, the RST SRD shall submit and immediately begin to implement a plan and schedule that will complete all outstanding lift station and pump repairs and replacement as soon as possible but no later than August 31, 2018. The RST SRD may seek assistance from a contractor, consultant, or federal agency other than EPA to draft the plan but remains solely liable for complying with this requirement.
41. The plan described in paragraph 40 above shall include an Overflow Emergency Response Plan to assist Facility operators protect public by outlining procedures that enable operators to respond quickly and effectively to future overflows and unanticipated bypasses or upsets that exceed any effluent limitation in the Permit. At a minimum the Overflow Emergency Response Plan must include mechanisms to:
 - (a) Ensure that operators are aware (to the greatest extent possible) of all overflows from portions of the collection system and any unanticipated bypass or upset that exceeds any effluent limitation in the Permit;
 - (b) Ensure appropriate responses including assurance that reports of an overflow or of an unanticipated bypass or upset that exceeds any effluent limitation in

the Permit are immediately dispatched to appropriate personnel for investigation and response and, further, that all potentially impacted surface water users and groundwater under the direct influence of surface water users are notified;

- (c) Ensure that operators have or have access to appropriate back-up equipment, staff, and resources to respond to future situations where the primary system at the lift station fails; and
- (d) Ensure appropriate personnel are aware of and follow the Plan and are appropriately trained and have access to the information they need to operate the system.

42. All notices and reports to the EPA required by this Consent Order shall be submitted to:

NPDES Enforcement Unit
U.S. EPA Region 8 (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202
Dygowski.laurel@epa.gov
Fax: (303) 312-6116

43. A copy of all notices and reports to the Tribe required by this **Consent Order** shall be submitted to:

Ivan Crow Eagle, Environmental Protection Director
Rosebud Sioux Tribe Environmental Protection Agency
P.O. Box 658
Rosebud, South Dakota 57570

44. All reports and information required by this Consent Order shall include the following certification statement, signed and dated by a duly authorized representative of the RST SRD:

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.

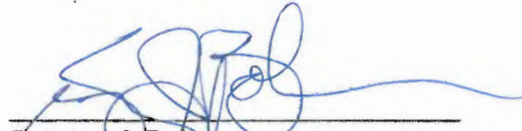
GENERAL PROVISIONS

45. The RST SRD shall fully implement each item of this Consent Order. The RST SRD'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 Rosebud Sioux Tribe-Sewer Revenue Department to penalties as provided under section 309 of the CWA, 33 U.S.C. § 1319.
46. This Consent Order does not constitute a waiver, suspension or modification of any requirement of the CWA or the Permit. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.
47. This Consent Order may be amended or modified by written agreement of the EPA and the RST SRD.
48. This Consent Order shall be effective upon receipt of the fully-executed copy by the RST SRD.
49. This Consent Order shall terminate upon written request to and approval by the EPA following successful completion of the requirements agreed to in the Consent Order.

IT IS SO AGREED AND ORDERED:

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

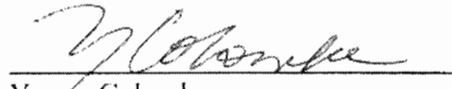
Date: 7/19/18



Suzanne J. Bohan,
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

**ROSEBUD SIOUX TRIBE
SEWER REVENUE DEPARTMENT.**

Date: 7-13-18



Young Colombe
Manager