

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION 8
Docket No.

2014 SEP -5 AM 10: 23

SDWA-08-2014-0038

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
LT Campgrounds, LLC)
d/b/a Custer/Mount)
Rushmore KOA,)
)
Respondent.)

**ADMINISTRATIVE COMPLIANCE
ORDER ON CONSENT**

INTRODUCTION

1. This Administrative Compliance Order on Consent (AOC) is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act), 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.) and violations of the statute, regulations or the EPA permits constitute violations of the Act.

2. The undersigned EPA official has been properly delegated the authority to issue this AOC.

3. The EPA alleges that LT Campgrounds, LLC, d/b/a Custer/Mount Rushmore KOA (Respondent), has violated the regulations and therefore the Act, as more fully explained below.

FINDINGS OF FACT AND ALLEGATIONS

The following general allegations apply to all times relevant to this action and to each violation alleged in this AOC:

4. Respondent is a limited liability corporation and therefore is a "person" as defined in the Act, and is subject to the requirements of the statute and/or regulations. 42 U.S.C. § 300f (12).

5. Respondent owns and/or operates the facility known as Custer/Mount Rushmore KOA, located at 12021 US Highway 16, Custer, SD (facility).

6. On July 7, 2011 and May 18, 2012, the EPA received Shallow Waste Disposal System/Well Inventory Request Forms from Custer/Mount Rushmore KOA. These forms indicate that Respondent operates a septic system which has the physical capacity to treat sanitary waste fluids generated by more than 20 people per day.

7. Based on the information described above and other documents subsequently exchanged between Respondent and the EPA, Respondent owns and/or operates a Class V Large Capacity Septic System at the Custer/Mount Rushmore KOA.

8. Respondent's septic system, as identified herein, is classified as a "Class V Injection Well" as defined by 40 C.F.R. sections 144.6, 144.81, and 146.5. Respondent is subject to applicable requirements of 40 C.F.R. sections 124, 144 and 146.

9. Lying beneath Respondent's disposal well is an underground source of drinking water (USDW), including but not limited to, the Madison Aquifer.

10. Based on the information described above and other documents subsequently exchanged between Respondent and the EPA, Respondent's septic system does not have sufficient capacity to effectively process sanitary waste fluids. At various times during the year, Respondent's septic system does not have sufficient capacity to prevent sanitary waste fluid from moving into the USDW given the inability of the septic system to process the large amounts of sanitary waste produced by the people staying at the facility. Respondent's failure to prevent sanitary waste fluids from entering a USDW is a violation of the Act and its implementing regulations found in 40 C.F.R sections 124, 144, and 146.

FINDINGS OF VIOLATION

11. Respondent is in violation of 40 C.F.R. section 144.12 for failing to operate a septic system that prevents sanitary waste fluids from entering the USDW.

ORDER

12. Based on the foregoing findings and pursuant to section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. section 144.12(d), the EPA orders and the Respondent agrees as follows:

- (a) ***Hiring of a Contractor or Consultant:*** Within seven (7) calendar days of the effective date of this AOC, Respondent shall submit in writing to the EPA Project Coordinator, the name of a contractor or consultant retained to perform any work described in this AOC. The contractor or consultant shall be licensed to design and install wastewater or septic systems. Respondent shall provide a copy of this AOC to any contractor and/or consultant retained to perform any work described in this AOC at least 48 hours prior to the initiation of such work. No contract between Respondent and a contractor and/or a consultant shall affect Respondent's obligation to comply fully with this AOC.
- (b) ***Compliance Plan:*** Within thirty (30) calendar days of the effective date of this AOC, Respondent shall submit a proposed Compliance Plan to manage the sanitary waste fluids generated by facility at full capacity in a manner that is compliant with the Act and its implementing regulations and any County and State permitting requirements. The proposed Compliance Plan shall include a description of any work that will expand the capacity of the septic system currently at the facility, a sampling plan consistent with paragraph 12(d) and the completion dates for such construction.

- (c) **Compliance Plan Revisions:** The EPA will review and approve, approve with comments, or disapprove the proposed Compliance Plan described herein. The EPA may request the State and/or the County to provide comments on the proposed Compliance Plan. Any and all revisions to the Compliance Plan, including any County and State revisions offered to the EPA, must be completed within 14 calendar days of notice that the report has been disapproved or approved with comments.
- (d) **Sampling Plan:** Respondent shall collect a sample beneath the point of discharge prior to the leachfield. Respondent must select the sampling location based on the existing septic system and the construction of any expansion of the existing septic system. The samples shall be analyzed for total and fecal coliform, nitrates, and nitrites, using EPA approved methodology. If the septic tanks will be removed from the facility, Respondent shall propose an appropriate location for sampling for the injection wells to be closed. Respondent shall take samples on July 7, 2014; August 11, 2014; and September 2, 2014. The sampling analysis results shall be submitted to the EPA within 30 days of the date when the sample was taken.
- (e) **Operation of the Facility:** Respondent shall not operate the facility in a manner that violates the Act and its implementing regulations. Respondent shall not operate the facility in a manner that exceeds the wastewater capacity that can be managed by the existing septic system, whether the existing septic system is expanded or not.
- (f) **Final Report:** Respondent shall submit a Final Report documenting any and all completed construction associated with the septic system and/or operating practices that address the management of the septic system fluids. The Final Report shall include a narrative of the work performed and management practices for the septic system. The Final Report is due fifteen (15) days after all construction associated with the septic system and/or operating practices that address the management of the septic system fluids is completed.
- (g) **Termination and Satisfaction:** Respondent shall submit to the EPA the Final Report documenting the completion of all requirements described herein. Upon receipt of the final report, the EPA may schedule an inspection of Respondent's facility with Respondent. After completion of the inspection, the EPA will notify Respondent in writing whether full compliance with this AOC has been achieved. The EPA's Project Coordinator will provide this notification by telephone as promptly as possible. This AOC shall terminate after the EPA issues a written approval of Respondent's Final Report.
- (h) **The EPA's Project Coordinator:** Respondent shall submit all documentation to

Britta Copt (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202

GENERAL PROVISIONS

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

14. Nothing in this AOC shall be construed as a waiver by the EPA or any other federal entity 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 this AOC.

15. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized by the party represented to legally bind the party to the terms and conditions of this AOC.

16. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this AOC.

17. Respondent remains obligated to comply with all requirements of the Act and its implementing regulations.

18. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to, any right of judicial review of the AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

19. The effective date of this AOC is the date it is filed with the Region 8 Hearing Clerk after it is signed by the EPA and Respondent.

United States Environmental Protection Agency, Region 8

Date: 06/30/2014

By: Eddie A. Sierra
Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
And Environmental Justice

LT Campgrounds, LLC d/b/a
Custer/Mount Rushmore KOA

Date: 6-20-2014

By: W. Hodgson
Walter Hodgson, Owner

In the Matter of: **LT Campgrounds, LLC d/b/a Custer/Mount Rushmore KOA**
Docket No.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

LT Campgrounds, LLC d/b/a Custer/Mount Rushmore KOA
P.O. Box 732
Custer, SD 57730

SEP 05 2014
Date

Gayle Aldinger