

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
The Rosebud Sioux Tribe-Sewer Revenue)
Department,)
)
)
Respondent.) Docket No. **CWA-08-2017-0002**
)
) **ADMINISTRATIVE ORDER ON**
) **CONSENT**
)
) Proceeding under section 309(a) of the
) Clean Water Act, 33 U.S.C. § 1319(a)

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, 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 Rosebud Sioux Tribe-Sewer Revenue Department, 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 Rosebud Sioux Tribe-Sewer Revenue Department shall alter the Rosebud Sioux Tribe-Sewer Revenue Department's responsibilities under this Consent Order unless the EPA, the Rosebud Sioux Tribe-Sewer Revenue Department, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, 30 calendar days prior to such transfer, the Rosebud Sioux Tribe-Sewer Revenue Department shall notify the EPA pursuant to paragraph 46 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 Rosebud Sioux Tribe-Sewer Revenue Department neither admits nor denies the FINDINGS AND CONCLUSIONS OF LAW. As such, and without any admission of liability, the Rosebud Sioux Tribe-Sewer Revenue Department consents to issuance of this Consent Order and agrees to abide by all of the conditions herein. The Rosebud Sioux Tribe-Sewer Revenue Department waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Rosebud Sioux Tribe-Sewer Revenue Department 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 Rosebud Sioux Tribe-Sewer Revenue Department 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 Rosebud Sioux Tribe-Sewer Revenue Department 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 Rosebud Sioux Tribe-Sewer Revenue Department 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 Rosebud Sioux Tribe-Sewer Revenue Department provides wastewater treatment services to the communities located within the exterior boundaries of the Rosebud Sioux Reservation (Reservation).
5. The Rosebud Sioux Tribe-Sewer Revenue Department 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 following: Black Pipe Community Lagoon, Horse Creek Community; Ideal Community Lagoon; Okreek Community Lagoon; Parmelee Community Lagoon; Spring Creek Community Lagoon; Soldier Creek South Community Lagoon; Swift Bear Community Lagoon; Two Strike Community Lagoon; White Horse Community Lagoon; Winner

Community Lagoon; Butte Creek Community Lagoon; Soldier creek North Community Lagoon; and Rosebud Community Lagoon.

6. Each facility is a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
7. The facilities discharge into several creeks which run 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.

Permit Requirements

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 September 14, 2010, the EPA issued a NPDES General Permit for Wastewater Lagoons in Indian Country (Permit), authorizing, in part, operators of wastewater treatment lagoons within the Reservation to discharge to waters of the United States in accordance with the conditions set forth in the Permit. The permit applies to Category 1

(no notification prior to discharge), Category 2 (notification prior to discharge) and Category 3 (no discharge) wastewater lagoon systems. The basic requirements for each of the three categories authorized to discharge by the Permit are specified in Parts 3, 4, and 5, respectively, of the Permit.

12. As relates to this Consent Order and the facilities included herein, the Rosebud Sioux Tribe-Sewer Revenue Department is the Permittee.
13. The Permit, which expired on September 14, 2015, has been administratively extended as to the Rosebud Sioux Tribe-Sewer Revenue Department pending the effective date of the revised NPDES General Permit for Wastewater Lagoons in Indian Country.
14. The facilities are authorized to discharge under the Permit as follows:

Wastewater Treatment Lagoon	Permit Number	Discharge Category
Black Pipe Community Lagoon	SDG589602	2
Horse Creek Community	SDG589603	2
Ideal Community Lagoon	SDG589605	2
Okreek Community Lagoon	SDG589606	3
Parmelec Community Lagoon	SDG589607	2
Spring Creek Community Lagoon	SDG589609	2
Soldier Creek South Community Lagoon	SDG589610	3
Swift Bear Community Lagoon	SDG589611	3
Two Strike Community Lagoon	SDG589612	2
White Horse Community Lagoon	SDG589613	2
Winner Community Lagoon	SDG589614	3
Butte Creek Community Lagoon	SDG589615	3
Soldier Creek North Community Lagoon	SDG589617	3

15. Part 4.1 of the Permit establishes the following effluent limits for Category 2 facilities:
biological oxygen demand (BOD), total suspended solids (TSS), pH, and oil and grease.
16. Part 4.1 of the Permit limits the effluent amount of BOD for Category 2 facilities to a 30-day average of 30 milligrams per liter (mg/L) and a 7-day average of 45 mg/L.
17. Part 4.1 of the Permit limits the effluent amount of TSS for Category 2 facilities to a 30-day average of 30 mg/L and a 7-day average of 45 mg/L.
18. Part 4.1 of the Permit limits the effluent amount of pH for Category 2 facilities to not less than 6.0 or greater than 9.0 in a single sample.
19. Part 4.2 of the Permit requires permittees of Category 2 facilities to monitor and record for specified constituents before and during a wastewater discharge.
20. Part 4.2.1 of the Permit requires permittees of Category 2 facilities to sample for the constituents specified in part 4.1 and notify the EPA prior to the start of any discharge.
21. Part 4.2.2 of the Permit requires permittees of Category 2 facilities to take a minimum of three samples during a discharge unless the discharge is two days or less.
22. Part. 4.2.2 specifies for Category 2 facilities that if no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report (DMR) form that no discharge or overflow occurred.
23. Parts 4.3 and 5.3 of the Permit requires permittees of Category 2 and Category 3 facilities shall conduct at a minimum weekly inspections and maintain the inspection information in a bound notebook.

24. Part 5.2 of the Permit requires the permittee of a Category 3 facility to monitor and record any unauthorized discharge for total flow, BOD5, TSS, pH, and oil and grease (both visual and grab sample).
25. Part 6.4.2 and 6.4.3 require the permittee of Category 2 and Category 3 facilities to report effluent monitoring results to the EPA in a DMR postmarked no later than the 28th day of the month following the completed reporting period.
26. Part 6.7 of the Permit requires the permittee to retain records of all monitoring information, including all calibration and maintenance records, for a period of at least three years from the date of the sample, measurement, report or application.
27. Part 6.8.1 of the Permit requires the permittee to submit, 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.
28. Part 7.5 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.

FINDINGS OF VIOLATION

29. The Spring Creek Lagoon (SDG589609) exceeded the Permit's Category 2 effluent limit for BOD₅ 30-day average and TSS average in October 2014 and the TSS 30-day average in September 2013 in violation of the Permit part 4.1 and the CWA.
30. The Rosebud Sioux Tribe-Sewer Revenue Department failed to submit the 24 hour notice of noncompliance for the Spring Creek Lagoon Permit exceedances cited in Paragraph 29 above to the EPA and the Tribe in violation of the Permit part 6.8.1 and the CWA.

31. The Rosebud Sioux Tribe-Sewer Revenue Department failed to submit the five-day written submission describing the non-compliance for the Spring Creek Lagoon in violation of the Permit and the CWA.
32. The Rosebud Sioux Tribe-Sewer Revenue Department failed to conduct the required Category 3 sampling for the June 2015 emergency discharge at the Rosebud Lagoon (SDG589619) in violation of the Permit part 5.2 and the CWA.
33. The Rosebud Sioux Tribe-Sewer Revenue Department failed to notify the EPA of the September 2015 discharge at the Black Pipe Lagoon (SDG589602), and to monitor and record the discharge in accordance with the requirements for Category 2 facilities in violation of the Permit part 4.2 and the CWA.
34. During a compliance inspection of the Facilities on September 15 and 16, 2015, the EPA observed trees and overgrown vegetation in and around the facilities' lagoons in violation of the Permit part 7.5 and the CWA.
35. During a compliance inspection of the facilities on September 15 and 16, 2015, the Rosebud Sioux Tribe-Sewer Revenue Department had no records of weekly inspections for all 14 facilities in violation of the Permit parts 4.3 and 5.3 and the CWA.
36. During a compliance inspection of the Facilities on September 15 and 16, 2015, the EPA was informed that Rosebud Sioux Tribe-Sewer Revenue Department had no operation and maintenance manuals for and did not maintain records of operation and maintenance at the 14 facilities' lagoons and lift stations in violation of the Permit parts 6.7 and 7.5 and the CWA.
37. During a compliance inspection of the Facilities on September 15 and 16, 2015, the EPA was informed that the Rosebud Sioux Tribe-Sewer Revenue Department did not retain

any wastewater operators for the facilities in violation of the Permit part 7.5 and the CWA.

38. The Rosebud Sioux Tribe-Sewer Revenue Department's failure to maintain records of weekly inspections and maintenance activities for all 14 facilities constitutes a violation of the Permit parts 4.3 and 5.3 and the CWA.

ORDER

39. Effective immediately, the Rosebud Sioux Tribe-Sewer Revenue Department shall monitor and record any discharge in accordance with parts 4.2 and 5.2 of the Permit.

40. Effective immediately, the Rosebud Sioux Tribe-Sewer Revenue Department shall complete, retain and make available to the EPA upon request records of weekly lagoon inspections containing the information required in parts 4.3 and 5.3 of the Permit. All inspection and monitoring records shall be kept for a minimum of three (3) years in accordance with part 6.7 of the Permit.

41. Within 60 days of the effective date of the Consent Order, Rosebud Sioux Tribe-Sewer Revenue Department shall submit a plan and schedule, including current and proposed funding sources, for hiring wastewater operators and removing overgrown vegetation and trees in and around the facilities' lagoons to meet the operation and maintenance requirements in part 7.5 of the Permit. The schedule accompanying the plan will propose reasonable timeframes not to exceed 24 months from the effective date of the Consent Order for completing the action items set forth in the plan.

42. In the event the new permit becomes effective as to these facilities during the effective period of this Consent Order, the monitoring, reporting and notification requirements and timeframes set forth in the new permit shall supersede the same requirements set forth

herein, and be fully incorporated and enforceable.

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

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

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

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

45. All reports and information required by this Consent Order shall include the following certification statement, signed and dated by either an elected Tribal official or duly authorized representative of the Rosebud Sioux Tribe-Sewer Revenue Department:

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

46. The Rosebud Sioux Tribe-Sewer Revenue Department shall fully implement each item of this Consent Order. The Rosebud Sioux Tribe-Sewer Revenue Department'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.

47. 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.
48. This Consent Order may be amended or modified by written agreement of the EPA and the Rosebud Sioux Tribe-Sewer Revenue Department.
49. This Consent Order shall be effective upon receipt of the fully-executed copy by the Rosebud Sioux Tribe-Sewer Revenue Department.
50. 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: 10/13/2016

 (acting for)

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

ROSEBUD SIOUX TRIBE.

Date: 9-30-16



The Honorable William Kindle,
Acting President