



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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OCT 29 2018

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EPA REGION VIII
HEARING CLERK

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Alvin Not Afraid, Jr., Chairman
Crow Tribe
P.O. Box 129
Crow Agency, Montana 59022

Cedric Black Eagle, Cabinet Head
Crow Tribe Water Resources Department
P.O. Box 520
Crow Agency, Montana 59022

Re: Findings of Violation and Order for Compliance, In the Matter of the Crow Tribe, the Crow Tribe Water Resources Department, and the Apsaalooke Water and Wastewater Authority, Docket No. **CWA-08-2019-0001**

Dear Chairman Not Afraid and Mr. Black Eagle:

The U.S. Environmental Protection Agency is issuing the Crow Tribe (Tribe), the Crow Tribe Water Resources Department (CTWRD), and the Apsaalooke Water and Wastewater Authority (AWWWA) (Respondents) the enclosed Findings of Violation and Order for Compliance (Order) for alleged violations of the Clean Water Act (Act) and National Pollutant Discharge Elimination System (NPDES) Permit No. MTG589009 (Permit) at the Crow Agency Wastewater Lagoon (Facility) owned by the Tribe and operated by the AWWWA, a division of the CTWRD. The EPA is authorized to issue this Order pursuant to section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary for the Respondents to achieve compliance with the Act. Specifically, the Order requires that the Respondents notify EPA within 24 hours of any overflows or bypasses from the Facility or collection system, apply for coverage under the requisite NPDES permit, conduct and report monitoring of the lagoon as specified in the Order until the issuance a requisite NPDES permit, then conduct and report monitoring a required by the permit. The Order also requires repair of deficient lagoon and collection system components at the Facility identified within the Order and previous EPA inspection reports, and the development of an Operation and Maintenance Plan, including an Overflow and Emergency Response Plan. Pursuant to the Order, the Respondents are required to comply with all other requirements of the requisite NPDES permit, once issued.

The Act authorizes the EPA to take appropriate enforcement actions necessary to secure prompt compliance with the Act. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil, criminal or administrative action. (See 33 U.S.C. § 1319, subsections (b), (c), (d), and (g).) Please be advised that issuance of this Order does not preclude civil or criminal U.S.

District Court action or EPA administrative penalty proceedings for the violations cited in the Order. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

Please do not hesitate to write or call me at (303) 312-6925 if you have any questions about this letter, the Order, or the EPA's process for dealing with noncompliance at tribal facilities. If you or your staff have any questions relating to technical issues raised in the Order, please contact Akash Johnson at (303) 312-6067 or johnson.akash@epa.gov. Any questions relating to legal issues should be directed to Amy Swanson at (303) 312-6906 or by email at swanson.amy@epa.gov. Thank you for your attention to this matter.

Sincerely,



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

Enclosure:

Findings of Violation and Order for Compliance

cc (electronic):

Dennis Bear Dont Walk, Chief Executive Counsel, Crow Tribe
Dion Killsback, Attorney, CTWRD
Connie Howe, Environmental Director, Crow Tribe
Tanner Black Eagle, Operator, AWWWA
Jim White, Indian Health Service
James Courtney, Indian Health Service
Josh Jabalera, Midwest Assistance Program

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2018 OCT 29 PM 3: 01

IN THE MATTER OF:)	Docket No. CWA-08-2019-0001
)	EPA REGION VIII
The Crow Tribe, the Crow Tribe Water)	FINDINGS OF VIOLATION AND
Resources Department, and the Apsaalooke)	AND ORDER FOR COMPLIANCE
Water and Wastewater Authority,)	
)	
Crow Agency Wastewater Lagoon,)	
)	Proceedings Under Section 309 of
Respondents.)	the Clean Water Act, 33 U.S.C. § 1319

STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance (Order) are issued pursuant to the authority vested in the Administrator of the EPA by section 309(a)(3) of the Clean Water Act (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 Order is based on the findings of violation of sections 301 and 402 of the CWA, and any permit condition or limitation implementing such sections of the CWA.

FINDINGS OF FACT AND LAW

Background

1. Respondent Crow Tribe (Tribe) is a federally recognized tribe under section 104 of the Federally Recognized Indian Tribe List Act, 25 U.S.C. § 479a, and 83 Fed. Reg. 34863, 34864 (July 23, 2018).
2. Respondent Crow Tribe Water Resources Department (CTWRD), is a tribal organization authorized under the laws of the Tribe and 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. Respondent Apsaalooke Water and Wastewater Authority (AWWWA) is a division of CTWRD that provides wastewater treatment services to the communities located within the exterior boundaries of the Crow Indian Reservation (Reservation).
4. Through the AWWWA, CTWRD operates and maintains on behalf of the Tribe the Crow Agency Wastewater Lagoon and Collection System (Facility) in Crow Agency, Montana, within the exterior boundaries of the Reservation.
5. Respondents Crow Tribe, CTWRD and AWWWA (collectively referred to hereafter as “Respondents”) are “persons” 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.
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 the Little Big Horn River, which is a tributary of the Big Horn River. The Little Big Horn River and the Big Horn River 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.

EPA's September 12, 2017 Inspection Findings

10. The EPA conducted an inspection of the Facility on September 12, 2017, to determine compliance with the CWA and NPDES requirements. During the September 12, 2017, inspection, the EPA inspector observed several components of the Facility were not operating properly and had not been maintained including, but not limited to, the following:
- a. Ultraviolet Disinfection System. The Ultraviolet (UV) treatment system was not operating as designed and had not been maintained. Specifically, the UV treatment trough in the UV treatment building had a total of 48 UV bulbs that were designed to deliver 41 milliwatts per square centimeter of intensity to the passing wastewater for disinfection, according to the operators. However, the sensors and/or control panel display for monitoring effective UV intensity delivered by the bulbs were not operational. The bulbs were functioning to some extent, but without an operational intensity monitor, the maintenance status and condition of the bulbs could not be fully assessed.
 - b. Back-up Blower Motors. Two of the four blower motors used to aerate the four cells of the Facility had been out of commission since at least March 2017. With only two operational blowers remaining, the Facility has no back-up aeration capacity in the event that one or both of the active blowers need to be pulled out of service for maintenance. Without maintaining the Facility's back-up capacity, the Facility was not being operated and maintained according to design specifications.
 - c. Control Panel in Blower Building. The control panel in the blower building had a malfunctioning display that did not show any data. Without a working display, the operators are unable to assess parameters characterizing the operational status of the associated treatment system(s).
 - d. Inspections. Self-inspections of the Facility were not being recorded.

April 2018 Sanitary Sewer Overflow

11. On April 9, 2018, the EPA was informed by the Indian Health Service (IHS) that raw sewage was overflowing from a lift station in the Facility's collection system (the Crow

Agency lift station) located to the east of the frontage road, east of U.S. Highway 212 (45.588379, -107.457569).

12. The sanitary sewer overflow (SSO) occurred because the Crow Agency lift station pumps were nonoperational and no back-up pumps were available. As a result of the SSO, which began approximately on April 7, 2018, one to two feet of sewage backed up into several residences, and the surface area of the SSO threatened a nearby nursing home, day care, Tribal building, and additional residences.
13. The SSO continued for approximately one and a half weeks until the Crow Agency lift station pumps were repaired and replaced.

EPA's June 12, 2018 Inspection Findings

14. The EPA conducted an inspection of the Facility on June 12, 2018, to determine compliance with the CWA and NPDES requirements. During the June 12, 2018, inspection, the EPA inspectors observed that several components of the Facility were not operating properly and had not been maintained including, but not limited to, the following:
 - a. Bar Screens at the Crow Agency Lift Station. The two bar screens at the Crow Agency lift station were not being regularly cleaned. Significant accumulation of solids was present behind the bar screens.
 - b. Fence at the Crow Agency Lift Station. A portion of the fence along the north side of the Crow Agency lift station was down.
 - c. SSO Debris. Debris from the April 2018 SSO were present on the ground in the Crow Agency lift station enclosure.
 - d. Backed-up Manhole. A manhole adjacent to the west side of the intersection of Moccasin Street (Bala Street) and Two Leggins Avenue, located in a residential yard (45.607838, -107.461236), was backed up with sewage and potentially groundwater at grade. This backed-up manhole was also identified in an April 11, 2018, IHS Technical Assistance Record. Dense vegetation around the

manhole during the EPA's inspection made it difficult to discern if the manhole was actively overflowing or if the water level was static.

- e. High-Level Alarm and Float Switches at the Lagoon Lift Station. The float switches and high-level alarm at the lift station at the lagoon (the Lagoon lift station) were not functioning correctly. According to Facility representatives, the alarm had been observed sounding when the lowest float switch was tipped instead of the higher floats. There was a suspected electrical wiring cross-connection between two or more float switches in the wet well. It is unknown if this suspected cross-connection impacted the ability of the high-level float switch to also trigger the high-level alarm and activate both pumps. This malfunction was also identified in a March 29, 2018, IHS Technical Assistance Record.
- f. Float Switches and Pumps at the Lagoon Lift Station. Upon arrival at the Lagoon lift station during the inspection, all float switches in the Lagoon lift station had failed to activate the pumps. According to Facility representatives, this malfunction occurred several times per month. To prevent a SSO at the Lagoon lift station, operators had to visit the Lagoon lift station at least once every several days to determine whether this malfunction was occurring and, if needed, manually override the lift station pumps. It was noted that when the float switches were manually overridden, as occurred during the inspection, the pumps did not automatically shut off when the wet well level was reduced to below the low water level; the operators had to monitor the wet well level and manually shut off the pump prior to leaving the area to prevent pump burnout.
- g. Pump Hours at the Lagoon Lift Station. Pump hours for the Lagoon lift station were not being recorded. While the flow rate through the pumps was recorded and displayed at the Lagoon lift station control panel, the total pump hours were not. As such, the total flow into the Facility's lagoon system over any extended time period could not be calculated. In addition, operators could not monitor if pumps were beginning to fail as indicated by an increase in the number of pump hours to move similar volumes of sewage.
- h. Influent Pipe Vault. The Facility's lagoon influent pipe vault, located adjacent to the north of the Lagoon lift station, was flooded with approximately two to three feet of water. The pipes were fully submerged, and rust was observed on the exterior of the pipes. This flooded pipe vault was also identified in a March 29, 2018 IHS Technical Assistance Record.
- i. Aeration System. The Facility's lagoon aeration system was not fully functional. In Cell 1, aerators were only working in approximately half the cell. In Cell 4, a zone of concentrated continuous bubbling was observed, potentially indicative of a ruptured aerator line or malfunctioning aerator head.

- j. Blowers. Facility representatives indicated the motors for Blowers 2 and 3 were not functional and were in need of repair, possibly including belt replacement and realignment.
- k. Control Panel in Blower Building. The control panel in the blower building had a malfunctioning display that did not show any data, which was also observed during the September 12, 2017, inspection.
- l. UV Disinfection System. The UV disinfection system was not fully functional. The UV system comprised of two banks of horizontally arranged bulbs with one sensor per bank. Neither sensor was displaying intensity readings, and a metric for determining UV transmittance or system treatment efficacy was not ascertainable. Some of the bulbs appeared to be switching on and off. Based on information provided by the Facility representatives, the UV system had not been undergoing any regularly scheduled maintenance, such as trough or bulb cleaning, and there were no backup bulbs available.

FINDINGS OF VIOLATION

Unauthorized Discharges

- 15. 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.
- 16. The EPA authorized Respondent AWWWA to discharge from the Facility under the EPA Region 8 NPDES General Permit for Wastewater Lagoons in Indian Country MTG589### (Permit), authorization number MTG589009, into the Little Big Horn River in accordance with the conditions set forth in the Permit between September 14, 2010, and September 14, 2015.
- 17. The Permit expired on September 14, 2015.

18. Respondents did not request to continue existing coverage under the Permit until issuance of a new general permit prior to the Permit expiring as provided by Part 8.4 of the Permit, or otherwise apply for discharge authorization under a new permit.
19. During the NPDES compliance inspections performed by EPA at the Facility on September 12, 2017, and June 12, 2018, the EPA inspectors identified Respondents operating and discharging from the Facility to the Little Big Horn River without NPDES authorization.
20. Respondents' unauthorized discharges from the Facility since the Permit expired on September 14, 2015, constitute a continuing violation of section 301 of the CWA.

Failure to Submit Discharge Monitoring Reports

21. Part 3.2 of the Permit states that the permittee, at a minimum shall monitor the discharge according to the constituents listed at the frequencies and with the types of samples indicated. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (DMR) that no discharge or overflow occurred.
22. Part 6.4.1 states that effluent monitoring results obtained during the previous month shall be summarized and reported on a DMR, postmarked no later than the 28th day of the month following the completed reporting period, and submitted to the NPDES Program, EPA Region 8 Montana Operations Office and the specified Tribe.
23. Respondents failed to submit complete monthly DMRs to EPA for 49 months of the 60 months authorized by the Permit.
24. Respondents' failure to submit complete monthly DMRs to EPA constitutes a violation of Part 6.4.1 of the Permit and the CWA.

Failure to Comply with a Request for Information

25. On April 6, 2018, the EPA sent Respondents a Request for Information Pursuant to Section 308 of the Clean Water Act (308 Information Request) seeking information on the quality of the effluent discharged from the Facility and requested a response within 30 days of receipt.
26. Respondents have not responded to the 308 Information Request.
27. Respondents' failure to respond to the 308 Information Request in a timely manner constitutes a violation of section 308 of the CWA.

ORDER

28. Within 10 days of receipt of this Order, Respondents shall submit a written notice of intent to EPA to comply with the requirements of this Order.
29. Immediately upon the effective date of this Order, until the issuance of a requisite permit for the Facility, Respondents shall notify the EPA and the Tribe by phone or email, as provided in paragraphs 36 and 37, below, within 24 hours of any discharges, overflows, or bypasses from the Facility or the collection system of raw sewage or partially treated sewage. Thereafter, Respondents shall comply with the notification requirements of the requisite NPDES permit.
30. Within 30 days of the effective date of the Order, Respondents shall submit to the EPA an Application Form 1, the relevant Application Form 2, and all supporting analytical data required to apply for discharge authorization from the Facility under a new NPDES permit.
31. Beginning the first of the month following the effective date of the Order and for each month thereafter until the issuance of a requisite NPDES permit for the Facility,

Respondents shall submit to the EPA monthly DMRs summarizing monitoring results of the following effluent parameters as monitored at the frequency and with the sample type specified below according to test procedures approved under 40 CFR Part 136. Sampling shall occur at a location where representative wastewater effluent samples may be collected immediately following the Facility's last treatment unit and before entering the conveyance to the Little Big Horn River. Submit completed DMRs on a monthly basis, postmarked no later than the 28th day of the month following the reporting period. Each calendar month is a reporting period.

Parameter	Monitoring Frequency	Sample Type
5-Day Biochemical Oxygen Demand, mg/L	Monthly	Grab
Total Suspended Solids, mg/L	Monthly	Grab
<i>Escherichia coli</i> (<i>E. coli</i>), colonies/100 mL	Monthly	Grab
pH, standard units	Weekly	Instantaneous
Flow, MGD	Weekly	Instantaneous
Total Ammonia Nitrogen, as Nitrogen, mg/L	Monthly	Grab
Total Nitrogen, mg/L	Monthly	Grab
Total Phosphorus, mg/L	Monthly	Grab
Oil and Grease, Visual	Weekly	Observation
Oil and Grease, mg/L	If sheen observed (see Note I, below)	Grab

Notes:

- I. If no sheen is observed during weekly Oil and Grease observations, report “no sample” in the respective “VALUE” fields on the DMRs
- II. On the DMRs, the entries in the “PERMIT REQUIREMENT”, “FREQUENCY OF ANALYSIS”, and “SAMPLE TYPE” fields are the respective effluent limitations, monitoring frequencies, and sample types that would apply under the National Pollutant Discharge Elimination System (NPDES) Fact Sheet for the EPA Region 8 General Permit for Wastewater Lagoon Systems in Indian Country.
- III. For DMR cells marked “--”, no information is requested.
- IV. Fifty copies of blank DMRs have previously been provided to the Crow Tribe Water Resources Department. The EPA can provide additional copies of blank DMRs upon request.

For purposes of these sampling requirements, the following definitions apply:

“Daily Maximum” (“Daily Max.”) is the highest allowable discharge during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. The daily discharge is calculated as the average measurement of the pollutant over the calendar day. If only one measurement or sample is taken during the calendar day, that will be considered the average for the calendar day.

A “grab” sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.

An “instantaneous” measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.

The “7-day (and weekly) average” is the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The calendar week, which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

The “30-day (and monthly) average” is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

32. Within 30 days of the effective date of the Order, Respondents shall submit to the EPA and immediately begin to implement a plan and schedule that will complete all outstanding physical repairs and replacement of deficient Facility components, including all items described in Findings 3, 5 through 14, and 16 of the July 16, 2018, inspection report issued pursuant to the EPA's June 12, 2018, inspection and discussed above in paragraph 14. All repairs and replacement of deficient components shall be completed as soon as possible but no later than 90 days from the effective date of this Order. Within 10 days of completion of all outstanding physical repairs and replacement of deficient Facility components identified in the plan, Respondents will provide a report documenting completion of these activities. Respondents may seek assistance from a contractor, consultant, or federal agency other than the EPA to draft the plan but remains solely liable for complying with this requirement.

33. Within 60 days of the effective date of the Order, Respondents shall submit to the EPA and immediately begin to implement an Operation and Maintenance Plan for the Facility and collection system. The Operation and Maintenance Plan shall address at a minimum:

- a. Procedures and frequencies for routine inspections of the collection system piping and lift stations;
- b. Procedures and frequencies for cleaning the two bar screens at the Crow Agency lift station;
- c. Procedures for correcting problems within the collection system piping such as blockages (e.g., roots, grease, or debris);

- d. Procedures for correcting problems with lift stations parts including pumps, floats, alarms, electrical components, panels, etc.;
 - e. Operation and maintenance of the Facility's treatment system using Chapter 9, Operation and Maintenance of the EPA's "Principles of Design and Operations of Wastewater Treatment Pond Systems for Plant Operators, Engineers, and Managers" (August 2011) as a guide, available online at <https://www.epa.gov/sites/production/files/2014-09/documents/lagoon-pond-treatment-2011.pdf>; and
 - f. An Overflow and Emergency Response Plan, described in paragraph 34 below.
34. The Operation and Maintenance Plan described in paragraph 33 above shall include an Overflow and Emergency Response Plan to assist Facility operators in protecting human health and the environment 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 and 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 requisite 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 requisite 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 including but not limited to back-up pumps; and

- d. Ensure appropriate personnel are aware of and follow the Overflow and Emergency Response Plan and are appropriately trained and have access to the information they need to operate the Facility and collection system.

35. Upon the effective date of the new NPDES permit for the Facility, Respondents shall comply with all requirements of the permit including, but not limited to the provisions authorizing discharges only in accordance with the requisite permit, sampling for all required parameters and electronic submittal of monthly DMRs to the EPA; reporting noncompliance which may endanger health or the environment within 24 hours to the EPA and the Tribe; reporting any unauthorized discharge by telephone the first workday following the incident to the EPA and the Tribe; submitting written descriptions of any unauthorized discharges within five days to the EPA and the Tribe; and properly operating and maintaining the Facility.

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

Akash Johnson, NPDES Enforcement Unit
U.S. EPA Region 8 (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6067
Email: johnson.akash@epa.gov

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

Connie Howe, Environmental Director
Crow Tribe Environmental Protection Department
P.O. Box 159
Crow Agency, Montana 59022-0400
Telephone: (406) 426-0397
Email: connie.howe@crow-nsn.gov
Fax: (406) 638-7301

38. All reports and information required by this Order shall include the following certification statement, signed and dated by a duly authorized representative for Respondents:

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.

OPPORTUNITY TO CONFER

39. Pursuant to section 309(a)(4) of the CWA, an order relating to a violation of section 1318 of the CWA does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. If Respondents wish to confer with EPA regarding the violation of section 308 of the CWA, 33 U.S.C. § 1318, alleged herein, Respondents must request a conference in writing within 10 days of receipt of this Order. If the requested conference is held, the provisions relevant to section 1318 of the CWA in this Order shall become effective 10 days after the conference is held. If Respondents do not request a meeting within 10 days of receipt of this Order, Respondents waive their right to a conference, and this Order shall become effective 10 days from its receipt. Any request for a conference, or other inquiries concerning this Order, shall be made in writing and sent to Mr. Akash Johnson in accordance with paragraph 36, above.

GENERAL PROVISIONS

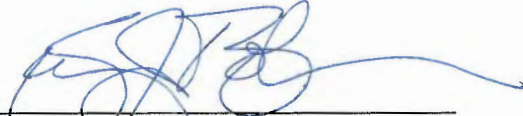
40. Respondents shall fully implement each item of this Order. Respondents' failure to implement all requirements of this Order in the manner and time period required shall be

deemed a violation of this Order and may subject Respondents to penalties as provided under section 309 of the CWA, 33 U.S.C. § 1319.

41. This Order does not constitute a waiver, suspension or modification of any requirement of the CWA, the now expired Permit or any new NDPEs permit. Issuance of this Order is not an election by the EPA to forgo any civil or criminal action.
42. Nothing in this Order shall be construed to preclude further action under § 309 of the Act for those violations cited herein or relieve Respondents from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or Tribal law or regulation.
43. This Order shall be effective within 10 days of its receipt by Respondents, or as otherwise provided in paragraph 39 of this Order.

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

Date: 10/29/18



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