

# BOGUE & BOGUE, LLP

LAW OFFICES

Cheryl Laurenz-Bogue  
Eric H. Bogue

Respond to Faith Office

2011 NOV 21 PM 3:40

FILED  
EPA REGION VIII  
HEARING CLERK

November 16, 2011

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Re: In Re City of Dupree, NPDES Permit No. SDG589116  
Docket No. CWA-08-2011-0040  
Answer of Respondent City of Dupree

Dear Ms. Artemis:

Enclosed please find for filing in your office the original Answer of Respondent City of Dupree on the above referenced matter. This same document have also been sent via electronic mail to your office at [artemis.tina@epa.gov](mailto:artemis.tina@epa.gov).

I have also enclosed a conforming copy of the Answer for your convenience to return to my office in the enclosed SASE. I have served a copy of this Answer and this letter upon Amy Swanson, Enforcement Attorney for the EPA by both regular mail and via electronic mail at [swanson.amy@epamail.epa.gov](mailto:swanson.amy@epamail.epa.gov).

Thank you in advance for your time and consideration on this matter. If you have any questions or concerns, please don't hesitate to contact me at your earliest convenience.

Sincerely,



Eric H. Bogue  
EHB/ehb  
en:  
cc: Client

## DUPREE

Ziebach County Courthouse  
200 Main St.  
P.O. Box 400  
Dupree, SD 57623-0400

605.365.5171 (tele)  
605.365.5717 (fax)

## FAITH

Butler Insurance Building, Suite 2  
104 West 1st St.  
P.O. Box 250  
Faith, SD 57626-0250

605.967.2529 (tele)  
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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2011 NOV 21 PM 3:40

<p>In the Matter of:</p> <p>The City of Dupree, South Dakota Dupree, South Dakota NPDES Permit No. SDG589116</p> <p>Respondent</p>	<p>Docket No. CWA-08-2011-0040</p> <p><b>ANSWER OF RESPONDENT CITY OF DUPREE</b></p>
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Respondent City of Dupree, a South Dakota Municipal Corporation, by and through its undersigned attorney Eric H. Bogue for its Answer to Administrative Complaint and Notice of Opportunity For Hearing:

I.

That said Complaint fails to state a cause of action against this Respondent upon which relief can be granted and moves that said Complaint be dismissed.

II.

Denies each and every allegation contained of said Complaint except such as are hereinafter specifically admitted.

AUTHORITY

1. Respondent admits the general statements of Authority contained in this section. However, Respondent lacks information or knowledge sufficient to form a belief as to the truth of the delegation of authority to any EPA official.

FINDINGS OF FACT

2. Respondent admits the allegations in ¶2, 3, 4, 5, 8, 10.
3. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, and 19 and therefore deny the same.

#### COUNT ONE

4. Respondent either admits or denies the allegations contained in Paragraph 20 (which is simply a restatement of those set forth in Paragraphs 1 through 19) as set forth above.
5. Respondent deny the allegations in Paragraphs 21 - 25.

#### COUNT TWO

6. Respondent either admits or denies the allegations contained in Paragraph 26 (which is simply a restatement of those set forth in Paragraphs 1 through 25) as set forth above.
7. Respondent denies the allegations in Paragraphs 27 - 34.

#### COUNT THREE

8. Respondent either admits or denies the allegations contained in Paragraph 35 (which is simply a restatement of those set forth in Paragraphs 1 through 34) as set forth above.
9. Respondent denies the allegations in Paragraphs 36 - 41.

#### COUNT FOUR

11. Respondent either admits or denies the allegations contained in Paragraph 42 (which is simply a restatement of those set forth in Paragraphs 1 through 41) as set forth above.
12. Respondent denies the allegations in Paragraphs 43 - 45.

#### COUNT FIVE

13. Respondent either admits or denies the allegations contained in Paragraph 46 (which is simply a restatement of those set forth in Paragraphs 1 through 45) as set forth above.
14. Respondent denies the allegations in Paragraphs 47 - 50.

III.

AFFIRMATIVE DEFENSES

15. The Complaint fails to state a claim upon which relief may be granted and contains matters of speculation and unsupported by any factual basis.
16. The Respondent contests the appropriateness of the proposed penalty as set forth in the Complaint
17. The Respondent asserts and preserves the affirmative defense of Act of God.
18. Respondent City of Dupree reserves the right to assert such additional affirmative defenses as may be appropriate as revealed during the discovery process.

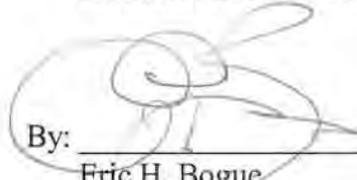
WHEREFORE, Respondent prays as follows:

1. That the Complaint be dismissed on its merits and with prejudice.
2. That no penalty be imposed upon Respondent City of Dupree.
3. For its costs and disbursements of this action.
4. For any other and further relief the Court deems just and equitable.

**RESPONDENT HEREBY REQUESTS AN ADMINISTRATIVE HEARING.**

Dated this 16<sup>th</sup> day of November, 2011.

BOGUE AND BOGUE, LLP

By:   
Eric H. Bogue  
Attorneys for Respondent  
P.O. Box 250  
Faith, SD 57626-0250  
(605) 967-2529

CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of November, 2011, I sent to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
artemis.tina@epa.gov

Amy Swanson  
Enforcement Attorney (8ENF-L)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
swanson.amy@epamail.epa.gov

by first class mail, postage prepaid, and by electronic mail, a true and correct copy of **Answer Of Respondent City of Dupree** relative to the above-entitled matter.



Eric H. Bogue