

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:) Docket No. CWA-08-2011-0040
)
City of Dupree, South Dakota)
Dupree, South Dakota) **STATUS UPDATE AND JOINT MOTION TO**
NPDES Permit No. SDG589116,) **VACATE ORDER TO FILE PREHEARING**
) **INFORMATION EXCHANGES**
Respondent.)

COMES NOW, Amy Swanson, Enforcement Attorney for Complainant United States Environmental Protection Agency, Region 8, and Eric Bogue of Bogue & Bogue, LLP, Attorney for Respondent City of Dupree, to update the Presiding Officer, the Honorable Elyana R. Sutin, on the status of the above-referenced matter and move jointly for an order from the Presiding Officer vacating the January 17, 2013 **FOURTH ORDER TO FILE PREHEARING INFORMATION EXCHANGE** as follows:

1. The parties pursuant to the Presiding Officer's January 12, 2012 Order to File Prehearing Information Exchange previously filed their respective prehearing information exchanges on March 8, 2012 (Complainant's), and June 22, 2012 (Respondent's).
2. Since filing Complainant's Status Report on October 1, 2012, the EPA notified the City that it qualifies for a partial inability to pay penalty reduction and provided the City a commensurate settlement offer.
3. The City notified the EPA that the settlement offer will be presented to the Dupree City Council at its regular meeting on March 5, 2013.
4. On February 26, 2013, the parties discussed the possibility of the City performing a Supplemental Environmental Project (SEP) as part of the settlement. The City requires time to familiarize itself with the EPA's SEP Policy and prepare a SEP proposal for the EPA's consideration.

5. As explained in the Complainant's Status Report, final resolution of this matter is subject to Respondent fully complying with the underlying Order for Compliance (Order) issued June 17, 2011 (CWA-08-2011-0016), and returning the facility to compliance with its National Pollutant Discharge Elimination System permit and the Clean Water Act. Specifically, Respondent needs to comply with paragraph 33 of the Order by submitting for EPA's review and approval a draft operation and management plan. Respondent submitted a draft plan for the EPA's review and approval in June 2012. The EPA provided the City comments and a list of deficiencies to correct in a letter dated October 24, 2012.
6. The City submitted a revised draft plan to EPA for review and approval on February 14, 2013.
7. The EPA reviewed the revised draft plan and notified the City on February 22, 2013 that it was acceptable subject to three corrections being made. The EPA requested pursuant to paragraph 34 of the Order that a final report addressing the EPA's comments be provided to the EPA and the Cheyenne River Sioux Tribe within 30 days.
8. The parties believe that they are close to settlement and that it is in their respective best interests, and in the public interest, to settle the claims alleged in the complaint without further litigation.
9. For these reasons, the parties request that the Presiding Officer vacate the Fourth Order to File Prehearing Information Exchange as to the filing of prehearing exchange information. The parties will notify the court upon reaching a settlement in principle and endeavor to file for the Presiding Officer's consideration a fully executed Consent Agreement as soon as possible. The parties are available to participate in a prehearing conference call upon request by the Presiding Officer.
10. This joint motion does not unduly prejudice either party.

WHEREFORE, based on the following update and for good cause shown, the parties respectfully request that the order requiring the parties to file prehearing information exchanges be vacated and the parties permitted an additional time period to settle the matter.

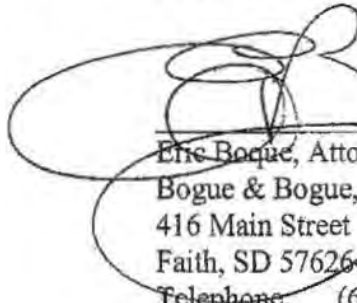
Respectfully submitted,

Date: 3-1-2013



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the STATUS UPDATE AND JOINT MOTION TO VACATE ORDER TO FILE PREHEARING INFORMATION EXCHANGES were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent as follows:

Via hand-delivery to:

The Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. EPA Region 8
1595 Wynkoop Street (8RC)
Denver, CO 80202-1129

Via electronic and regular mail to:

Eric H. Bogue, Attorney
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Faith, SD 57626-0250
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Dated: 3.1.2013

By: 