

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2019 SEP -3 PM 4:19

IN THE MATTER OF:

) Docket No. ~~CWA-08-2019-0006~~

)

) **ADMINISTRATIVE ORDER ON**
) **CONSENT**

Two Medicine Water Company,

)

)

Respondent.)

FILED
EPA REGION VIII
HEARING CLERK

INTRODUCTION

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Two Medicine Water Company (TMWC), an Indian tribal organization of the Blackfeet Tribe (Tribe) of the Blackfeet Indian Reservation of Montana (Reservation), 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 AND CONCLUSIONS OF LAW 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 official. 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 CWA sections.

PARTIES BOUND

This Consent Order shall apply to and be binding upon the EPA and upon the TMWC, the TMWC’s 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 control of the TMWC, including without limitation, any change in ownership or operation of the facilities operated and maintained by the TMWC referenced in this Consent Order shall alter the TMWC's responsibilities under this Consent Order unless the EPA, the TMWC, and the successor in interest agree in writing to allow the successor to assume such responsibilities. Additionally, no later than 30 calendar days prior to such transfer, the TMWC shall notify the EPA of the transfer by the method described in paragraph 46 of this Consent Order.

STATEMENT OF THE PARTIES

The following FINDINGS OF FACT AND CONCLUSIONS OF LAW are made by the EPA and the TMWC. In signing this Consent Order, the TMWC neither admits nor denies the FINDINGS OF VIOLATION. As such, and without any admission of liability, the TMWC consents to issuance of this Consent Order and agrees to abide by all the conditions herein. The TMWC waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the TMWC 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 TMWC 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. 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.
2. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program under which the EPA may authorize discharges into navigable waters, subject to specific terms and conditions.
3. Effective January 1, 2016, the EPA issued the NPDES General Permit for Wastewater Lagoons in Indian Country MTG589### (General Permit) authorizing, in part, operators of wastewater treatment lagoons located on the Reservation to discharge to waters of the United States in accordance with the conditions set forth in the General Permit.
4. Wastewater is a “pollutant” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
5. The Tribe is a federally recognized tribe under section 104 of the Federally Recognized Indian Tribe List Act, now codified at 25 U.S.C. § 5131, and 84 Fed. Reg. 1200, 1201 (February 1, 2019).
6. The TMWC is an Indian tribal organization authorized under the laws of the Tribe.
7. The TMWC 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, for federal enforcement purposes.
8. The TMWC 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, for federal enforcement purposes.

9. The TMWC provides wastewater treatment services and drinking water treatment services to the communities located within the exterior boundaries of the Reservation.
10. The TMWC operates and maintains multiple wastewater treatment facilities and a drinking water facility on behalf of the Tribe throughout the Reservation.

Browning Lagoon Wastewater Treatment Facility

11. The TMWC operates and maintains the Browning Lagoon Wastewater Treatment Facility.
12. The Browning Lagoon Wastewater Treatment Facility is a wastewater treatment facility consisting of a sanitary sewer collection system and wastewater treatment lagoons.
13. The Browning Lagoon Wastewater Treatment Facility is a “point source” within the meaning of section 502(14) of the CWA, U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
14. The Browning Lagoon Wastewater Treatment Facility discharges wastewater into an unnamed tributary of Willow Creek.
15. The unnamed tributary of Willow Creek flows into the Willow Creek, which flows into the Jefferson River, a tributary of the Missouri River.
16. The Missouri River and its tributaries listed above 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).
17. On May 22, 2014, the EPA issued the TMWC coverage authorization under the General Permit for the Browning Lagoon Wastewater Treatment Facility under permit number MTG589006. This coverage began on May 22, 2014, expired on September 14, 2015, authorized discharge, and required monthly monitoring.

18. On May 16, 2017, an EPA Inspector and EPA contractor (Inspectors) conducted an inspection of the Browning Lagoon Wastewater Treatment Facility, during which the Inspectors had conversations with employees at the Browning Lagoon Wastewater Treatment Facility, made field observations, performed a document review, and reviewed information from the Integrated Compliance Information System (ICIS).
19. During the May 16, 2017 inspection at the Browning Lagoon Wastewater Treatment Facility, the Inspectors observed and gathered evidence of the following:
 - a. There was overgrown vegetation on the dikes surrounding each cell;
 - b. Animal burrows were present in the berms; and
 - c. Weekly inspections were not being performed and recorded.
20. On July 5, 2018, the EPA reissued the TMWC coverage authorization under the General Permit for the Browning Lagoon Wastewater Treatment Facility under permit number MTG589104. This coverage began on July 5, 2018, expires on December 31, 2020, authorizes discharges, and requires subcategory A/monthly monitoring.
21. The Browning Lagoon Wastewater Treatment Facility is assigned reporting sub-category A - Monthly, and its coverage under the General Permit requires the TMWC to summarize and report to EPA the effluent monitoring results obtained in the previous month on a Discharge Monitoring Report (DMR) Form (EPA No. 3320-1), or in the NetDMR format, submitted no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, “no discharge” shall be reported. General Permit Part 5.4.1.
22. The Browning Lagoon Wastewater Treatment Facility’s coverage under the General Permit requires the TMWC:

- a. to keep the dikes mowed on a regular basis during the growing season or as needed (e.g., keep growth below 6" in height), Permit Part 6.5.5;
- b. to promptly remove burrowing animals from the dikes and promptly repair damage to the dikes cause by burrowing animals, General Permit Part 6.5.2 and 6.5.3; and
- c. to inspect on at least a weekly basis and maintain records of the inspections, General Permit Part 3.3.

Two Medicine Water Treatment Plant

- 23. The Two Medicine Water Treatment Plant is a drinking water treatment facility.
- 24. The Two Medicine Water Treatment Plant is a “point source” within the meaning of section 502(14) of the CWA, U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
- 25. The Two Medicine Water Treatment Plant discharges backwash into an unnamed tributary of the Two Medicine River.
- 26. The unnamed tributary of the Two Medicine River flows into the Two Medicine River, a tributary of the Marias River, which is a tributary of the Missouri River.
- 27. The Missouri River and its tributaries listed above 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).
- 28. On December 10, 2012, the EPA issued the TMWC an individual NPDES permit for the Two Medicine Water Treatment Plant under permit number MT0030687. This permit coverage began on January 1, 2013, and expired on December 31, 2017. This coverage authorized the Two Medicine Water Treatment Plant to discharge.
- 29. Permit number MT0030687 required the TMWC:

- a. to perform self-monitoring at the Two Medicine Water Treatment Plant, Part 1.3.2; and
- b. to inspect the Two Medicine Water Treatment Plant on at least a weekly basis and maintain records of the inspections, Part 1.3.3.

30. On May 16, 2017, the Inspectors conducted an inspection of the Two Medicine Water Treatment Plant, during which the Inspectors had conversations with employees, made field observations, and performed a document review.

31. During the May 16, 2017 inspection at the Two Medicine Water Treatment Plant, the Inspectors observed and gathered evidence of the following:

- a. The facility was discharging;
- b. Self-monitoring was not being conducted as required by Part 1.3.2 of permit number MT0030687:
 - i. Total flow had not been monitored weekly as required by the permit. The flow measurement device was installed approximately one year prior to the inspection but had not been operational;
 - ii. pH had not been monitored using a grab sample as required by the permit;
 - iii. pH had been monitored on a monthly frequency rather than the weekly frequency required by the permit;
 - iv. Total residual chlorine had not been monitored using a grab sample as required by the permit;
 - v. Total residual chlorine had been monitored on a monthly frequency rather than the daily frequency required by the permit; and

- c. Weekly inspections were not being performed and recorded as required by Part 1.3.3 of permit number MT0030687.
32. TMWC had a duty to reapply and submit a permit application at least 180 days before the expiration of Permit No. MT0030687 as required by Part 4.4 of the permit. TMWC did not submit a permit application to renew permit coverage.
33. The permit coverage under Permit No. MT0030687 expired on December 31, 2017.
34. Since January 1, 2018, TMWC has operated and maintained the Two Medicine Water Treatment Plant.
35. Since January 1, 2018, TMWC has discharged from the Two Medicine Water Treatment Plant.

FINDINGS OF VIOLATION

Browning Lagoon Wastewater Treatment Facility

36. The TMWC has not submitted monthly discharge monitoring reports for the Browning Lagoon Wastewater Treatment Facility since General Permit coverage began under permit number MTG589104 on June 7, 2018, in violation of Part 5.4.1 of the General Permit and the CWA.
37. The TMWC has not kept the Browning Lagoon Wastewater Treatment Facility's dikes mowed on a regular basis during the growing season or as needed (e.g., keep growth below 6" in height). Permit Part 6.5.5, in violation of Part 6.5.5 of the General Permit and the CWA.
38. The TMWC has not promptly removed burrowing animals from the dikes at the Browning Lagoon Wastewater Treatment Facility or promptly repair damaged to the

dikes cause by burrowing animals, in violation of Part 6.5.2 and 6.5.3 of the General Permit and the CWA.

39. The TMWC has not inspected the Browning Lagoon Wastewater Treatment Facility on a weekly basis and maintained records of the inspections, in violation of Part 3.3 of the General Permit and the CWA.

Two Medicine Water Treatment Plant

40. Prior to December 31, 2017, the TMWC had not performed self-monitoring as required and described in paragraph 3131.b, in violation of Part 1.3.2 of permit number MT0030687 and the CWA.
41. Prior to December 31, 2017, the TMWC had not inspected the Two Medicine Water Treatment Plant on at least a weekly basis or created and maintained records of any inspections, in violation of Part 1.3.3 of permit number MT0030687 and the CWA.
42. TMWC has discharged without a permit since January 1, 2018, at the Two Medicine Water Treatment Plant, in violation of CWA § 301(a), 42 U.S.C. § 1311(a).

ORDER

43. Effective immediately, the TMWC shall comply with all current and future permit requirements applicable to the Browning Lagoon Wastewater Treatment Facility and the Two Medicine Water Treatment Facility.
44. All DMRs shall be submitted through NetDMR, as required by the applicable permit with a notification emailed to the EPA at the address below stating the date each DMR required by this Order was submitted:

champagne.kenneth@epa.gov

2018, through the date of submittal and provide the email notification required by paragraph 44.

49. TMWC shall immediately start conducting and documenting weekly inspections of the Browning Lagoon Wastewater Treatment Facility, as required by the applicable permit.
50. Within 90 days of the effective date of this Consent Order, the TMWC shall provide the EPA copies of weekly lagoon self-inspections performed over the last six months at the Browning Lagoon Wastewater Treatment Facility. The TMWC shall also provide the EPA copies of inspection reports on a monthly basis until the EPA informs the TMWC in writing that such monthly submission is no longer necessary.
51. Within 30 days of the effective date of this Consent Order, the TMWC shall mow the vegetation on the dikes surrounding each cell at the Browning Lagoon Wastewater Treatment Facility to below 6" in height and submit to the EPA photographic proof and the date(s) of such action.
52. Within 30 days of the effective date of this Consent Order, the TMWC shall remove the animal burrows from the dikes at the Browning Lagoon Wastewater Treatment Facility, repair the damage to the dikes, and submit to the EPA photographic proof and the date(s) of such actions.

Two Medicine Water Treatment Plant

53. TMWC shall immediately cease discharging pollutants from the Two Medicine Water Treatment Plant and provide a report to the EPA within 10 days after the effective date of this Consent Order. The report shall contain the date the discharge ceased and a photograph of the former discharge location showing no remaining discharge. If discharges do not cease immediately, the report shall specify the reason(s).

45. All permit applications submitted by TMWC to the EPA as required by this Consent

Order shall be submitted to:

Paul Garrison
Wastewater Section
U.S. EPA Region 8 (8WD-CWW)
1595 Wynkoop Street
Denver, Colorado 80202

With a scanned copy of each Notices of Intent emailed to:

champagne.kenneth@epa.gov

46. All other information and notices submitted by TMWC to the EPA as required by this

Consent Order shall be submitted to:

Kenneth Champagne
U.S. EPA Region 8
Montana Operations Office
10 West 15th Street, Suite 3200
Helena, Montana 59626

47. All hard copy information submitted by TMWC to the EPA as required by this Consent

Order shall include the following certification statement, signed and dated by a duly authorized representative of the TMWC:

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.

Browning Lagoon Wastewater Treatment Facility

48. Within 30 days of the effective date of this Consent Order, the TMWC shall submit in

NetDMR all monthly DMRs required by Part 5.4.1 of the General Permit from June 7,

54. Within 30 days of the effective date of this Consent Order, the TMWC shall submit a permit application for the Two Medicine Water Treatment Plant to the EPA using Forms 1 and 2C available at <https://www.epa.gov/npdes/npdes-applications-and-forms>.

GENERAL PROVISIONS

55. The TMWC shall fully implement each item of this Consent Order. The TMWC'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 TMWC to penalties as provided under section 309 of the CWA, 33 U.S.C. § 1319.
56. This Consent Order does not constitute a waiver, suspension, or modification of any requirement of the CWA, the General Permit, or any individual discharge permit. Issuance of this Consent Order is not an election by the EPA to forgo any civil or criminal action.
57. This Consent Order may be amended or modified by written agreement of the EPA and the TMWC.
58. This Consent Order shall be effective upon receipt of the fully-executed copy by the TMWC.
59. This Consent Order shall terminate upon EPA determining successful completion of the requirements agreed to in the Consent Order or a determination by EPA that a subsequent enforcement action is necessary and supersedes this Consent Order.

IT IS SO AGREED AND ORDERED:

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

Date: 9/3/19



Suzanne J. Bohan,
Director
Enforcement and Compliance Assurance Division

TWO MEDICINE WATER COMPANY,
Respondent.

Date: 8-21-19



Timothy Davis, Chairman
Blackfeet Tribe