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Office of Enforcement
Compliance & Environmental Justice

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

In the Matter of)	Docket No. OWA-08-2012-0006
)	
)	OGLALA SIOUX TRIBE'S
)	RESPONSE TO AND WRITTEN
Oglala Sioux Tribe Water and Sewer Company)	NOTICE TO EPA OF ITS INTENT
Pine Ridge, South Dakota)	TO COMPLY WITH THE EPA'S
NPDES Permit No. SDG589507)	ORDER OF COMPLIANCE
)	
)	Proceedings under Section 309(a) of the
Respondent)	Clean Water Act , 33 U.S.C. § 1319(a)

INTRODUCTION

The Oglala Sioux Tribe hereby responds to the Findings of Violation and Order for Compliance issued by the United States Environmental Protection Agency on February 7, 2012, and received by the Oglala Sioux Tribe by certified mail on February 14, 2012. The Oglala Sioux Tribe was provided the opportunity to have input into the EPA Order, however the Oglala Sioux Tribe notes that some inaccurate information remains in the EPA's Findings of Fact and Law. In the interest of being held responsible for actual infractions and for making the precise corrections needed to the Oglala Sioux Tribal water system, the Oglala Sioux Tribe will bring these inaccuracies to the EPA's attention in this Response.

RESPONSE TO EPA'S FINDINGS OF FACT AND LAW

The Oglala Sioux Tribe agrees with the EPA's Findings of Fact and Law, with the exception of the following items:

OGLALA SIOUX TRIBE'S RESPONSE TO AND WRITTEN
NOTICE TO EPA OF ITS INTENT TO COMPLY WITH THE
EPA'S ORDER OF COMPLIANCE

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EPA REGION VIII
MINNEAPOLIS, MN

Finding of Fact No. 11. This Finding should be corrected to read “The facility discharges into White Clay Creek, which flows into the *White River* before entering the Missouri River. This correction is needed because White Clay Creek *does not flow into the Moreau River, it flows into the White River before entering the Missouri River*. The remainder of the Finding is correct.

Finding of Violation No. 20. Most of the information contained in this Finding is incorrect, and the Oglala Sioux Tribe requests that it be deleted from the Order. If photos exist they must be of another manhole. The Oglala Sioux Tribal Water Program asserts that what actually happened was the pumps went down (ceased operating) in the lift station so the water staff could not pump to the new lagoon. The Water Program staff used the trash pump to pump effluent from the first manhole to a pipe, where gravity would assist the sewage in flowing to the old lagoon. The Oglala Sioux Tribe would agree to a Finding of Violation to this effect.

Finding of Violation No. 22. The Oglala Sioux Water Program asserts that the continuing SSO was NOT caused by inadequate, as the Water program staff was down at the SSO 24 hours a day, 7 days a week. The Water Program asserts that the actual cause of the continuing SSO was the inadequate design of the water system by the Indian Health Service in the first instance. The water system was not designed and built to handle the flow it is currently handling. The Oglala Sioux Tribe would agree to a Finding of Violation to this effect.

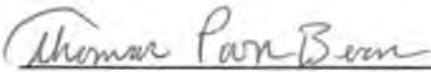
Order – Paragraph No. 32. The Oglala Sioux Water Program objects to the language “...including, but not limited to ...” in this paragraph. The Oglala Sioux Water Program is entitled to and the EPA is charged with giving notice to the Tribe of *all violations* contained in the Order from the EPA. The Statutory Authority contained in the Findings of Violation and Order for Compliance states that “...section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the

Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation, *inter alia*, sections 301 or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act." For the EPA to enforce this statute, it has to give the Tribe notice of a *finite list* of violations by the Tribe, which the EPA has done in its Findings of Violation and Order for Compliance. Then, the Order must be limited to ordering compliance for the *finite list* of violations which the EPA has listed in its Findings of Violation and Order for Compliance. Otherwise, the Order is overly broad. The Oglala Sioux Tribe asserts that the language "including, but not limited to..." in Paragraph 32 of the EPA's Order is overly broad.

CONCLUSION

The Oglala Sioux Tribe does intend to comply with the EPA's Order. The Tribe is in the process of determining what needs to be done, and by whom, to comply with all the requirements of the Tribe's NPDES Permit.

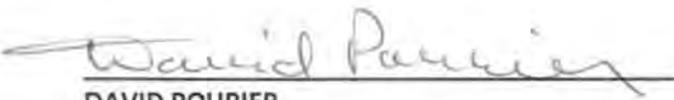
FOR THE OGLALA SIOUX TRIBE, Respondent:

for 

JOHN YELLOW BIRD STEELE
PRESIDENT
OGLALA SIOUX TRIBE

2-23-12

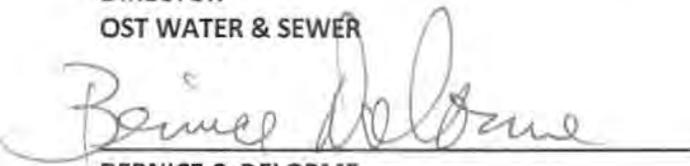
DATE



DAVID POURIER
DIRECTOR
OST WATER & SEWER

2-22-12

DATE



BERNICE C. DELORME
OST GENERAL COUNSEL

2/22/2012

DATE

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