

IN THE MATTER OF:	Docket No. CWA-08-2024-0007
South Dakota Department of Transportation	EXPEDITED PENALTY ACTION AND CONSENT AGREEMENT
Respondent	Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)

On June 27, 2023, authorized representatives of the United States Environmental Protection Agency (EPA) conducted an inspection of South Dakota Department of Transportation Project No. NH-B 0212(184)143, Project Control No. 04XG (Project), located in Dewey County, South Dakota, within the exterior boundaries of the Cheyenne River Reservation, to evaluate compliance with applicable Clean Water Act (Act) and National Pollutant Discharge Elimination System (NPDES) requirements. This property was owned and/or operated by the South Dakota Department of Transportation (SDDOT or Respondent). The purpose of the inspection was to evaluate Respondent's compliance with the NPDES permit applicable to the Project, EPA NPDES Construction General Permit for Stormwater Discharges from Construction Activities (Project-specific NPDES ID SDR10I02I).

As a result of the inspection, the EPA has found that Respondent, a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), violated the permit referenced above. The violations are described in the enclosed Expedited Settlement Offer Worksheet – Findings and Alleged Violations (Settlement Worksheet), which is incorporated into this Expedited Penalty Action and Consent Agreement (Consent Agreement) by reference.

By signing this Consent Agreement, Respondent:

- (1) certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Settlement Worksheet have been corrected; and
- (2) consents to the assessment of a penalty in the amount of \$2,100.

Respondent agrees that it shall, no later than 30 calendar days after an EPA Regional Judicial Officer or Regional Administrator issues a final order (Final Order) ratifying this Consent Agreement, make payment in the amount stated above by any of the methods provided on the website <https://www.epa.gov/financial/makepayment>. For additional instructions, see the website <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. The EPA has provided Respondent with a printout of these websites, entitled "Payment Instructions." Respondent's payment shall indicate it is payable to "U.S. Environmental Protection Agency," In the check or other instrument of payment, the Respondent shall also reference the docket number that appears on the Final Order. Within 24 hours of payment, Respondent shall also e-mail proof of payment to each of the following:

johnson.akash@epa.gov

and

r8_hearing_clerk@epa.gov

and

CINWD_acctsreceivable@epa.gov

The term “proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

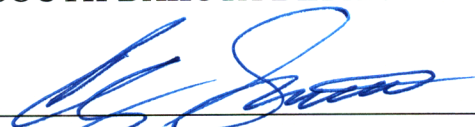
Consistent with section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), Respondent will not deduct penalties paid under this Consent Agreement for federal tax purposes.

This Consent Agreement and the Final Order will commence and conclude this proceeding pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). This Consent Agreement and the Final Order will resolve only the federal civil penalty claims for the specific violations alleged in the Settlement Worksheet, up to April 1, 2024. The EPA reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal statutes or regulations, to enforce the provisions of this Consent Agreement and the Final Order. This Consent Agreement and the Final Order do not constitute a waiver, suspension or modification of the requirements of the Act, or any regulations promulgated or permit issued thereunder, and they do not affect the right of the EPA or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Respondent neither admits nor denies the allegations set forth in the Settlement Worksheet, but Respondent admits that the EPA has jurisdiction over this matter under section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. part 22. For the purposes of this proceeding, Respondent waives any right to contest the allegations in the Settlement Worksheet and its right to appeal the Final Order. Respondent agrees to bear its own costs and attorney’s fees related to this Consent Agreement.

The Complainant and Respondent consent to service of this Consent Agreement and the Final Order at the following valid e-mail addresses: livingston.peggy@epa.gov (for Complainant), and craig.smith@state.sd.us (for Respondent). The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to bind Respondent to it.

**SIGNATURE BY RESPONDENT
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION:**



Signature May 6, 2024
Date

Name and Title (print):
Craig Smith Director of Operations

Mailing Address:
700 E Broadway Ave
Pierre, SD 57501

E-mail Address:
Craig.Smith@state.sd.us

Telephone:
605-773-5155

SIGNATURE BY EPA COMPLAINANT:

Emilio Llamozas, Supervisor Date
NPDES and Wetlands Section
Water Enforcement Branch
Environment and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202
llamozas.emilio@epa.gov
(303) 312-6407

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and (c), the Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ORDERED to comply with all terms of the Consent Agreement, effective upon the date of signature of this Final Order.

Regional Judicial Officer

Date