

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**RESPONSE TO COMMENTS
FINAL DENIAL OF A UIC CLASS V PERMIT APPLICATION
SD50000-11095 through 11098**

FOR

**WINONA INN LIMITED PARTNERSHIP
DBA THE LODGE AT MOUNT RUSHMORE**

24075 Highway 16A

Keystone, Pennington County, South Dakota
(Latitude 43.941616, Longitude -103.399454)

Background

On May 11, 2016, the EPA received an Underground Injection Control (UIC) Class V permit application from Winona Inn Limited Partnership, DBA the Lodge at Mount Rushmore (“Lodge”) to continue to dispose commercial sanitary waste into four (4) Underground Injection Control Class V shallow injection wells. These wells are one component of the Onsite Wastewater Treatment System (OWTS). The injection wells are located at the Lodge site in Pennington County, South Dakota, Latitude 43.941616, and Longitude -103.399454. This application was received in response to an EPA letter to the operator dated March 31, 2016, citing concern that the operator failed to comply with the Code of Federal Regulations (CFR) at 40 CFR § 144.12(a), which states: “No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.” In the March 31, 2016 letter, the EPA prohibited the operator from continuing to discharge the Lodge’s sanitary waste into his OWTS, and required him to submit a plan to plug and abandon his system or apply for a UIC Class V permit.

On February 15, 2017, the EPA issued a Notice of Intent to Deny the UIC Class V Draft Permit and published notice of this Intent to Deny on the EPA’s Regional website and in the Rapid City Journal in Rapid City and the Hill City Prevaler in Hill City. The public notice announced a public comment period which began on February 15, 2017 and ended on March 17, 2017. The EPA received comments from the operator and other members of the public.

Pursuant to the regulations at 40 CFR § 124.17, EPA is issuing the following response to all significant comments received during the comment period on the proposed permit decision:

Comment 1: The operator stated that he is in compliance with Pennington County and South Dakota Department of Environment and Natural Resources (SDDENR) regulations and that he has completed all the work to the OWTS that the County and SDDENR required. He further commented that he spent around \$32,000 or more improving the facility's OWTS. He also stated that this work included installation of an Aerobic Treatment Unit.

EPA Response: The operator has still not provided sufficient information to EPA to demonstrate that his OWTS has had the necessary maintenance and that it is functioning properly. Prior to issuance of the EPA's Notice of Intent to Deny the Permit, the EPA asked the operator to provide receipts for pumping out the septic tanks, and repairs or other work done. This information was requested to determine whether the operator had corrected the significant deficiencies in the OWTS that led to failure of the system. Prior to issuance of the EPA's Notice of Intent to Deny his permit the operator submitted:

- (1) one detailed repair estimate for \$19,706.00, and
- (2) an email from the septic service provider asking for \$516.06 for credit card fees.

During the comment period, the operator submitted:

- (1) one detailed repair estimate for \$5,740.00,
- (2) one invoice with no information regarding the work done for \$5,350.06,
- (3) and two other undated invoices for the monthly service contract fee and for adjustments to one of the septic tanks, for a total of \$1,331.64.

The EPA received no information confirming that the repair work referred to in the estimates was ever completed, nor records or receipts indicating that the tanks were pumped. EPA also received no records or receipts regarding the installation of an Aerobic Treatment Unit. Therefore, even with the additional information received from the operator during the comment period, EPA is not able to confirm that the necessary actions were taken to correct the deficiencies in the system and that the system is operating properly.

Due to the sensitive hydrogeology of the area, it is important for the EPA to be able to confirm that the system is operating properly. According to a review of the area by SDDENR, this area contains fractured metamorphic rock. A surface geology of fractured metamorphic rock provides easy pathways for surface and groundwater to flow away from a contaminated site into sensitive areas such as those where public water supply wells are located. SDDENR's report stated that vulnerable geology combined with problematic septic systems and drinking water wells in the same vicinity can be a cause for concern. Since EPA cannot definitively confirm that the OWTS is working properly, it cannot conclude that issuance of a permit will protect underground sources of drinking water (USDWs) near the facility.

Comment 2: The operator commented that he was unaware that the inventory form was incomplete and offered to submit any missing information to the EPA at this time.

EPA Response: The inventory form is no longer relevant as that is only required for the rule authorization process. Because of the information from Pennington County and SDDENR indicating that the OWTS was not working properly, the EPA previously determined that the operator was no longer authorized by rule to operate his Class V system and needed to apply for and receive a permit in order to resume operation of his system. EPA informed the operator of this decision in a letter dated March 31, 2016.

The EPA cited failure to submit complete Class V well inventory as a reason for denial because the operator was out of compliance with federal UIC regulations and continued to violate these regulations after he was notified by the EPA of his obligations under 40 CFR §144.83(a)(1). The EPA sent the operator a letter in December of 2015 requesting inventory information along with a shallow waste disposal system/well inventory request form. The form directs the operator to fill out one form for each well/drainfield. There are 12 yes or no questions on the front of the form and spaces to provide Basic Inventory Information on the back. Basic Inventory Information covers operating status, construction design, geographic coordinates, date of construction, depth of system, maximum volumes of fluids, source and nature of the fluids, and depth to groundwater. The EPA received an inventory form from the operator on January 5, 2016. The yes or no questions were answered, but it did not contain any Basic Inventory Information on the Lodge's OWTS.

Comment 3: The EPA received a comment from the operator stating that he had recently received a Small Water Treatment operator certification (March 2017) and sent EPA sampling information. Additionally, the operator stated that he is in compliance with SDDENR's Public Water System (PWS) reporting requirements, as he is not required to sample in the off-season.

EPA Response: In a June 30, 2016 email, the EPA reminded the operator that sampling data was required as part of the permit application process. In this email, the EPA also stated that the samples must be collected and analyzed by a state certified laboratory. The operator neglected to provide these samples to EPA prior to issuance of the Notice of Intent to Deny the Permit. The operator submitted some sampling information during the comment period but did not satisfy the requirement that the samples be collected and analyzed by a state-certified laboratory. Therefore, EPA could not verify that the samples actually met drinking water standards, and could not determine that there would be no harm to USDWs or nearby PWSs.

As explained above in the response to Comment 1, the sensitive hydrogeology of this area coupled with the proximity of the OWTS to PWS wells leads to increased concern for public health. Therefore, submission of accurate sampling data is necessary for the EPA to be able to assess the risk to USDWs in the area.

Additionally, it is relevant to EPA, as stated in the Statement of Basis, that a consumer confidence report posted by SDDENR on its website (<http://denr.sd.gov/des/dw/PDF/SysInfo/sysinfo2217.pdf>) indicates that the Lodge has had numerous PWS violations in the past five years, including failure to monitor for total coliform, failure to take source samples for E. Coli, and exceedances of maximum contaminant levels for

total and fecal coliform. Therefore, EPA is not able to conclude that the potential contamination risk to USDWs has been eliminated, and therefore public health at the Lodge or other nearby PWSs may still be at risk. Finally, the statement from the operator that he is in compliance with SDDENR's PWS reporting requirements in the off-season when the Lodge is closed and he is not required to sample is not responsive to EPA's request for the sampling data and is not relevant to the EPA's final permit denial decision.

Comment 4: The EPA received a comment from the operator of the Lodge indicating that he had ceased injection into the septic tanks and drainfields on November 23, 2016.

EPA Response: By letter dated March 31, 2016, the EPA informed the operator that his Class V wells were no longer rule authorized, and that he is prohibited from injecting effluent into the drainfields without a Class V UIC Permit. The operator did not cease injection until eight months later, at the end of the 2016 season when the Lodge closed for the winter. This action alone does not eliminate the potential risk to public health that could result if the Lodge was allowed to resume discharge of wastes without adequately addressing the problems with the OWTS.

Comment 5: The operator commented that a potential solution to the concern about the proximity of the PWS wells to the four drainfields was for him to use a water supply well on the north side of his property.

EPA Response: This action would not address EPA's concerns related to the OWTS and would not eliminate potential risks to USDWs in the area.

Comment 6: Responses from three other commenters voiced support for the EPA's proposed decision to deny the permit, corroborating information about sewage overflows from the Lodge to a neighboring property and also supporting the fact that the hydrogeology of the area is problematic.

EPA Response: These comments were supportive of the EPA's proposed denial. However, with the exception of the comments corroborating information related to the sewage overflows and sensitive hydrogeology, the other specific comments provided are outside the scope of this permitting decision.