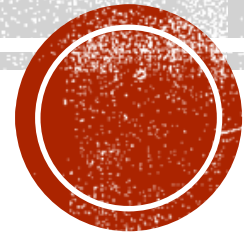


INSPECTING FEDERAL FACILITIES

Nate Kaufhold

Jake Ward



**WHO HAS
FEDERAL
FACILITIES ON
THEIR
SYSTEM?**





THE START

- During November 2020, our office received a phone call from a disgruntled employee from a local Federal Facility that is connected to our system. The employee gave us an in-depth look into how their grease was being disposed of.
- This employee reported this case to DEQ who then reported the case to the EPA and us.





HER STORY







BUSTED



QUICK FACTS

We've never inspected this facility in the past.

Last known cleaning at the time of inspection was 10/22/20

Date of our inspection was 11/29/20

There are 2 full-service kitchens on site

The Cantina serves 150-200 meals per day.

The Cantina has a 1000 gallon outdoor grease trap

The Prep kitchen serves 135-150 meals per day

The Prep Kitchen has a separate 1000 gallon grease trap



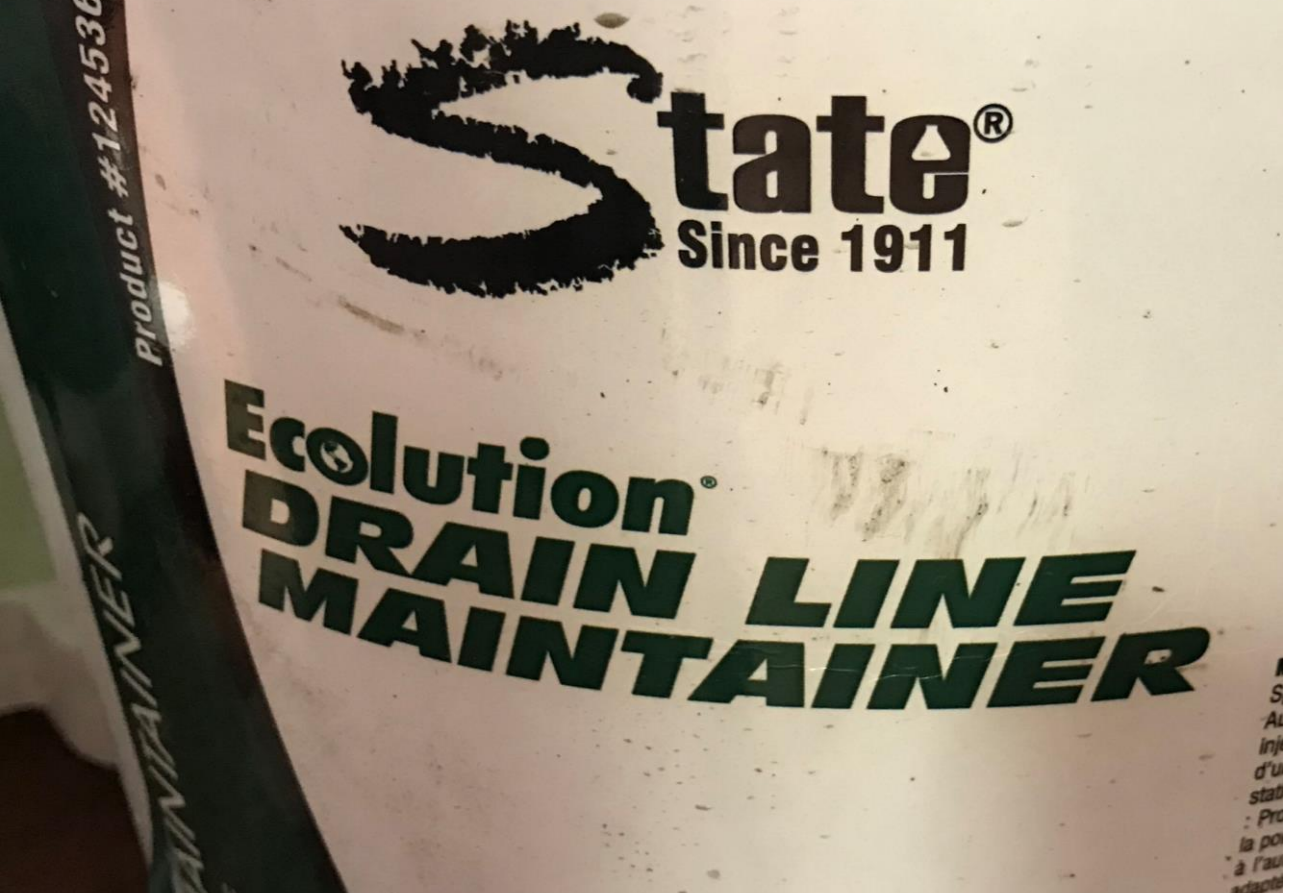


TIME TO INSPECT









ENZYME USAGE



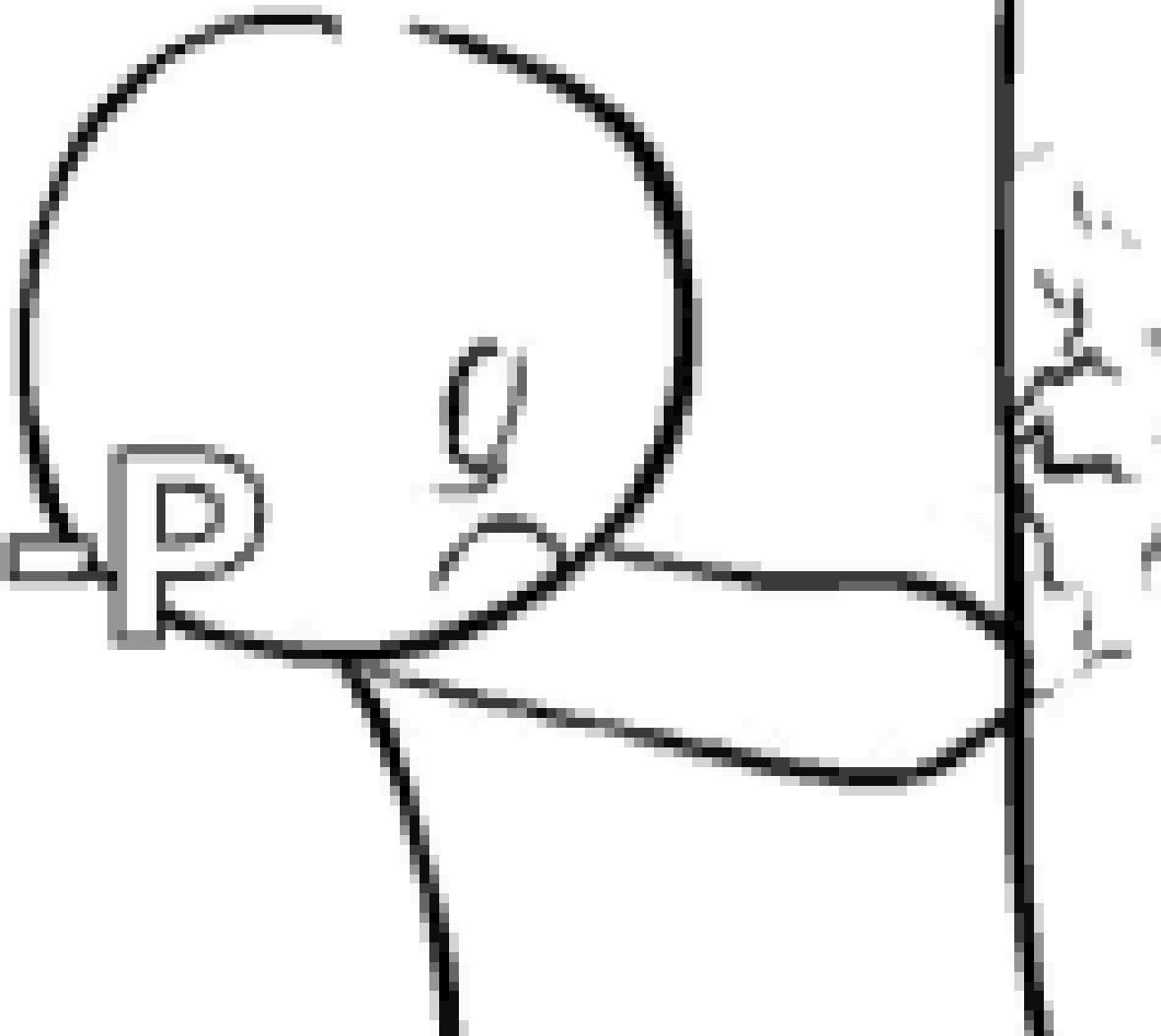


**“EVERY LAST DROP MADE ITS
WAY INTO THE GREASE TRAP”**



S-T-O-P

I-T





INLET



OUTLET



**ZERO DETECTABLE
GREASE**



THE CANTINA GREASE TRAP



THE PREP KITCHEN

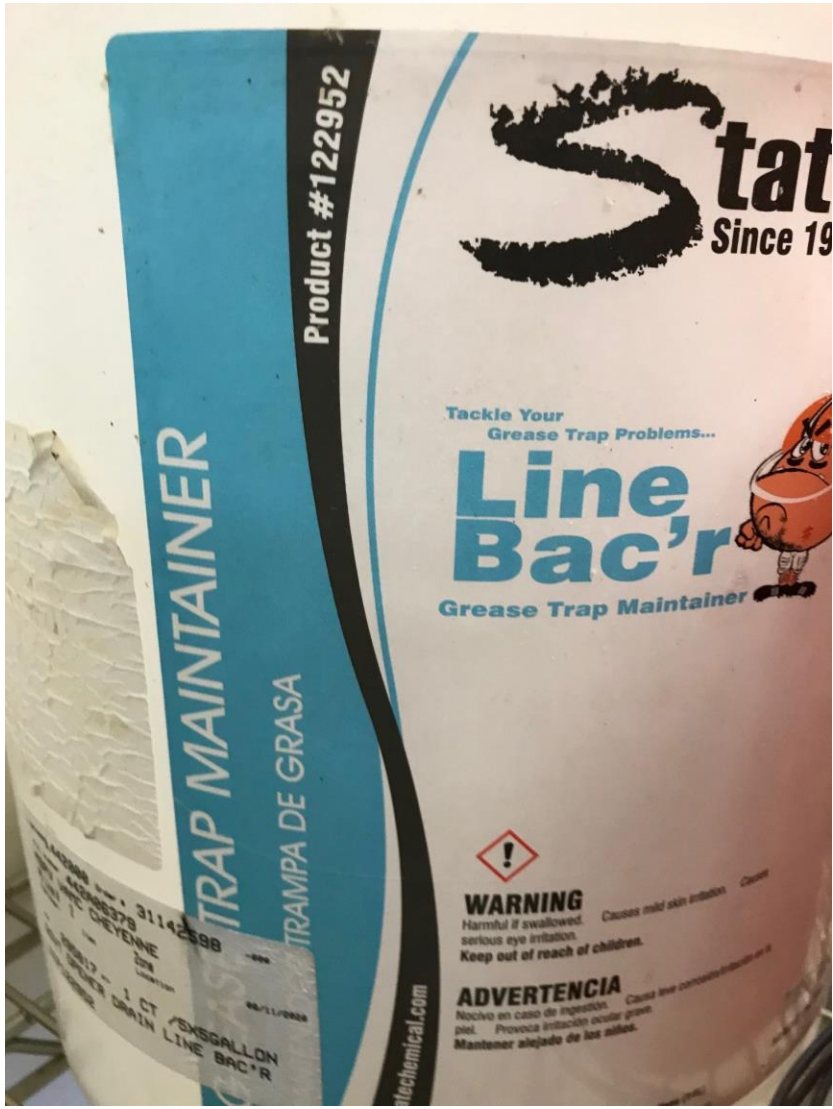




DANGER
DO NOT OPERATE
TAG STATION
Must be Locked
Before Use

State
24/7
Service

in sink
erator
Food Waste
Disposer





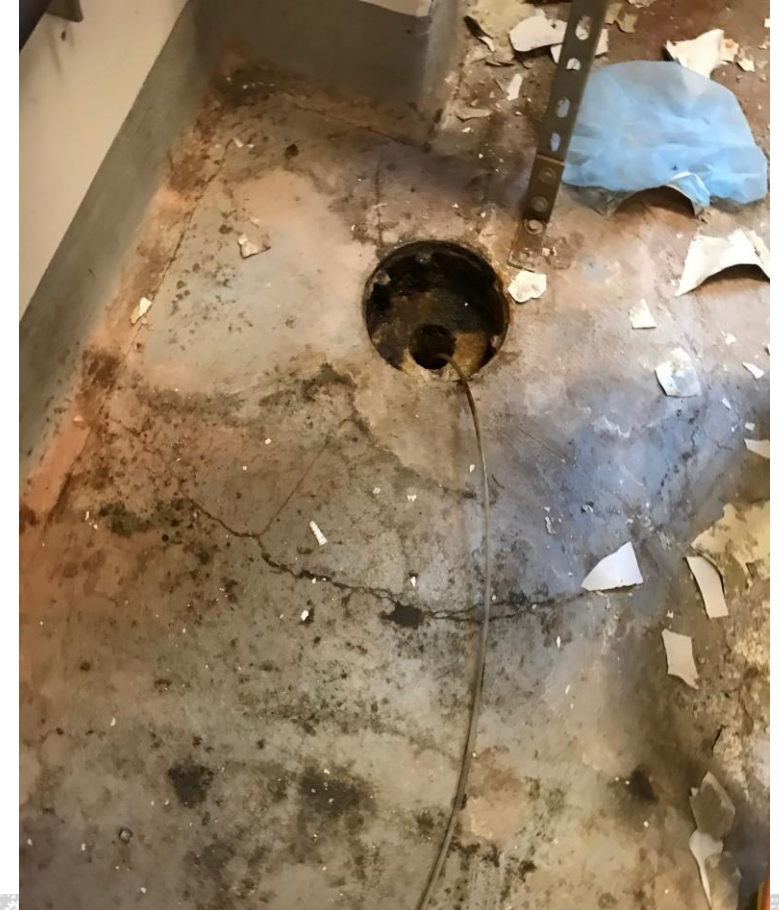
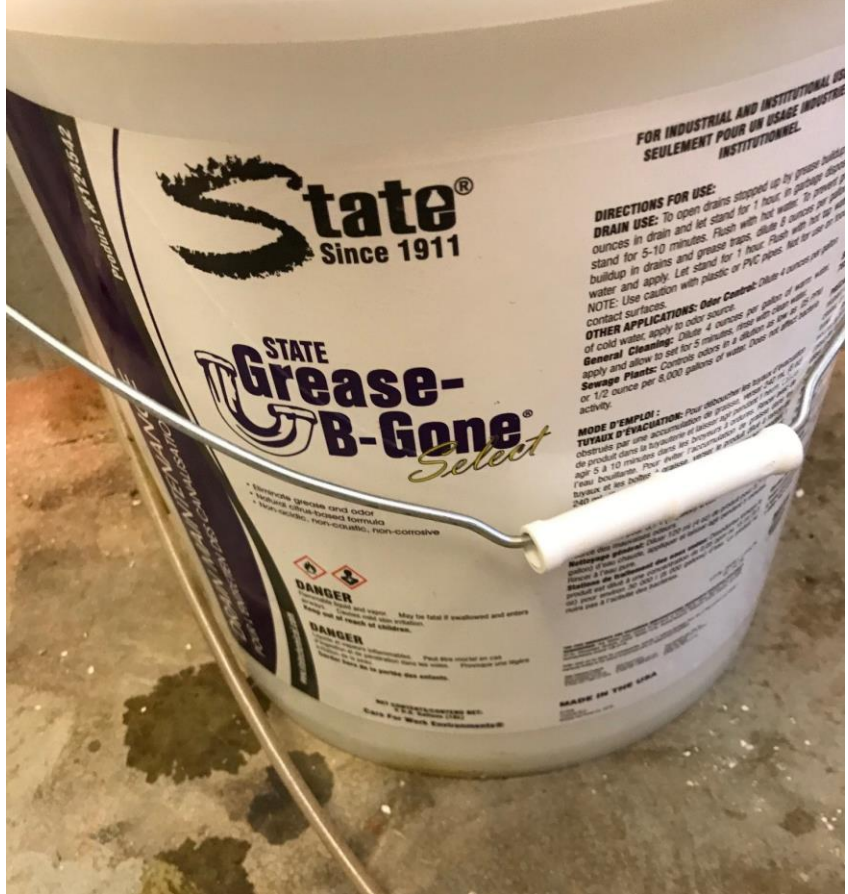
PREP KITCHEN GREASE TRAP



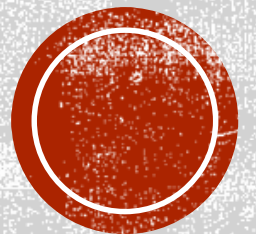


PULPER





ENZYME TREATMENT





Approximately 16 gallons (128lbs) of waste FOG from the Cantina kitchen is collected into a portable pump every 7 days.

The waste FOG is then disposed of directly into the inlet compartment of the Cantina interceptor once every 14 days.

The Prep kitchen serves 135-150 meals per day
The Cantina serves 150-200 meals per day.

The FOG production for this facility, during the 28 days between the last cleaning of the grease interceptors and the inspection, was calculated to be approximately **830lbs**

WHAT DID THEY DO WRONG?

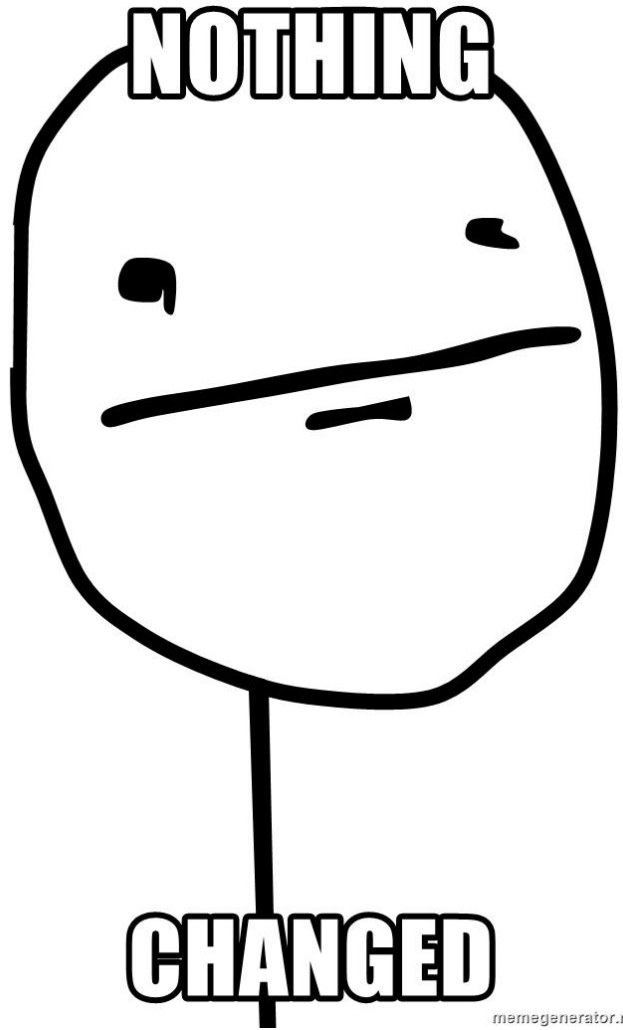
1. Several missed grease interceptor cleanings.
2. Substituting biological/enzyme treatment for the pumping of grease interceptors.
3. Facility personnel stated no waste FOG collection container is used for the disposal of waste fryer FOG, as required in the Pollution Prevention Grease Trap/Interceptor Best Management Practices (Supplement to rules and regulations).
4. Observations of low FOG accumulation and calculations of high FOG production indicate the usage of a biological/enzyme treatment has caused FOG produced by this facility to bypass the interceptors and be contributed into the City collection system, which is prohibited, as outlined in Cheyenne City Code Chapter 13.20.050, Section B, Part 2.



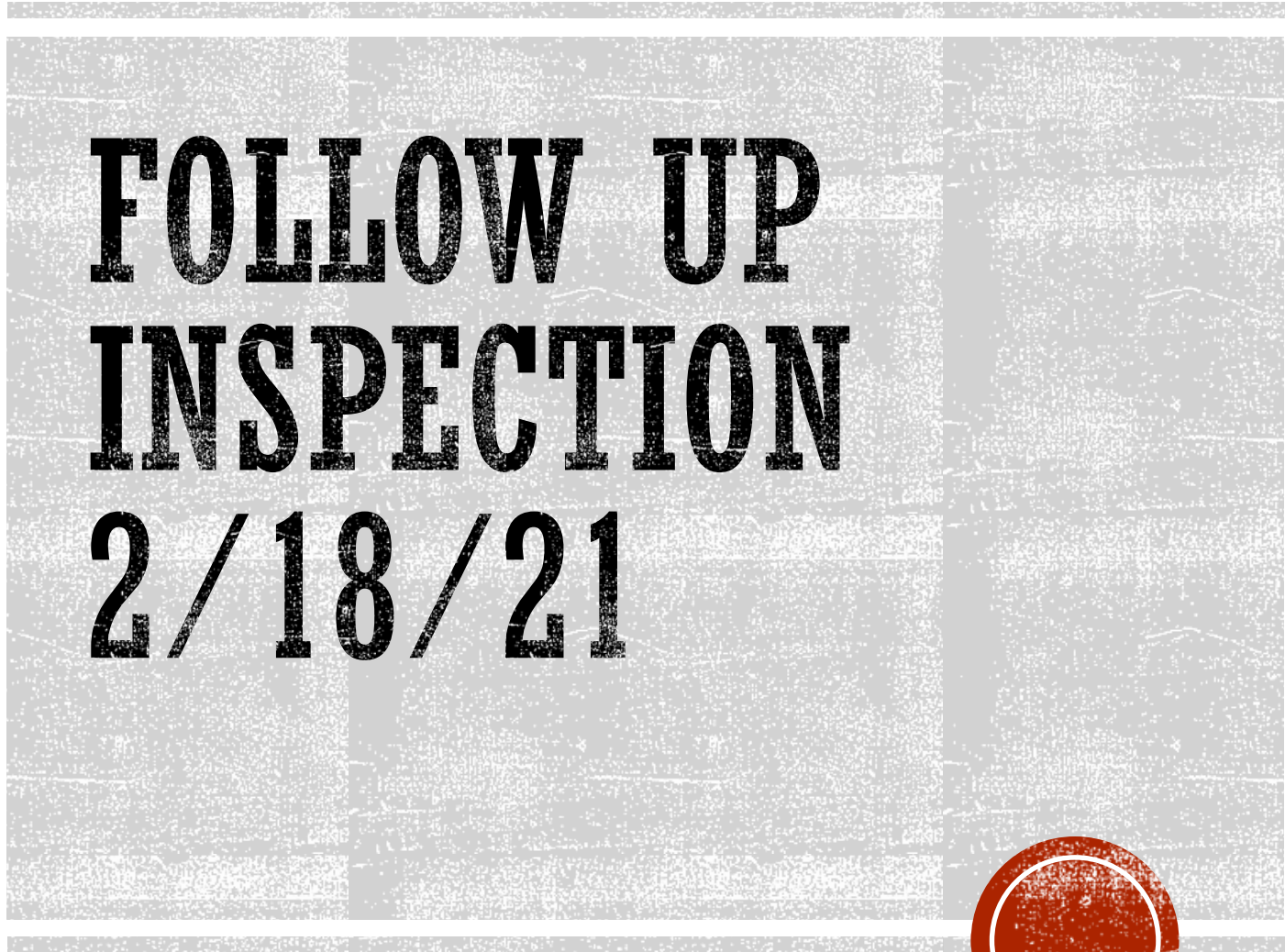
VIOLATION NOTICE

**NOV WAS SENT WITH
INSPECTION FINDINGS,
REQUIRED CORRECTIONS,
AND A FINE.**





memegenerator.net

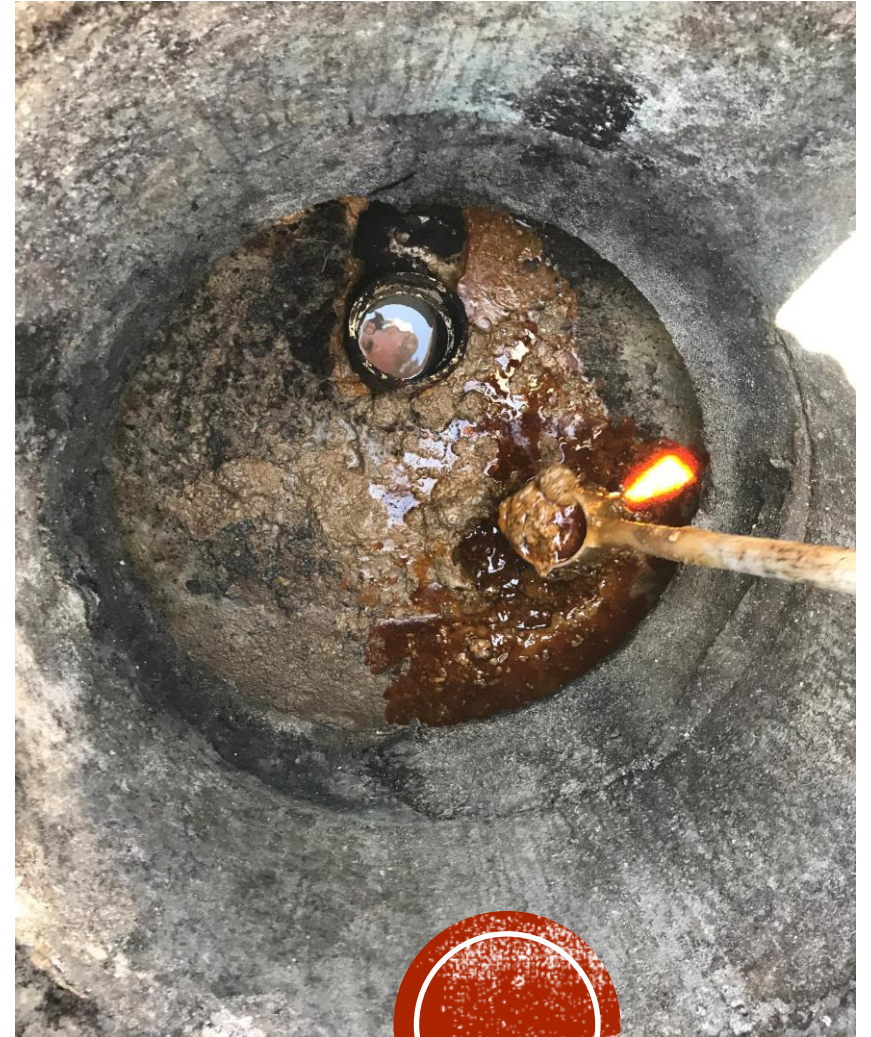


**CORRECTIONS
MADE
4/14/21**

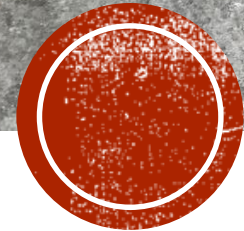
***FINE HAD YET TO BE PAID**



CANTINA GREASE TRAP



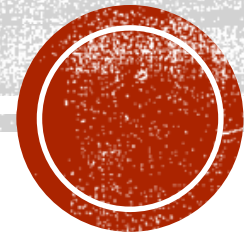
PREP KITCHEN



Vicki,

Please have the fine of \$3000 addressed to our water bill. [The Federal Facility] purchasing is having difficult time trying to pay this as it is above our purchase threshold, however if you are able to apply it to our bill we can get this paid asap.

**CORRESPONDENCE
ON FINE**





WE SAID NO

THEIR ATTACK

- I have received notification from legal department notifying me that it is against Federal Law that a Federal establishment be fined from a local or state agency, please see below. I am asking for waiver of this violation as this seemed to be a misunderstanding on who the findings were sent to in the first place. I understand you had sent it to [Assistant Facility Director] through certified mail, however, [Assistant Facility Director] never received this letter and maybe it was delivered to another entity at the [Federal Facility] that has over 1,000 employees. As soon as your department came out the second time for the follow up we were shocked as we were still waiting for the report of items. When we found this out I reached out to your department to make me the responsible party and I had the deficiencies corrected immediately (well within the time limit established in your memo). Since this time [Federal Facility] has remained in compliance by setting up process that will not allow for the same thing to happen. I urge the Cheyenne Board of Public Utility to withdraw their fine and we both move on with an understanding that the Chief Engineer at the [Federal Facility] is the responsible party for letters concerning deficiencies. It is in the [Federal Facility's] best interest to remain within compliance. Please let me know how your agency would like to proceed.

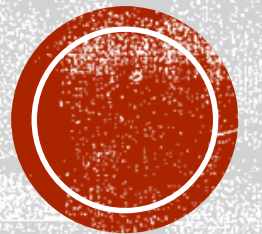


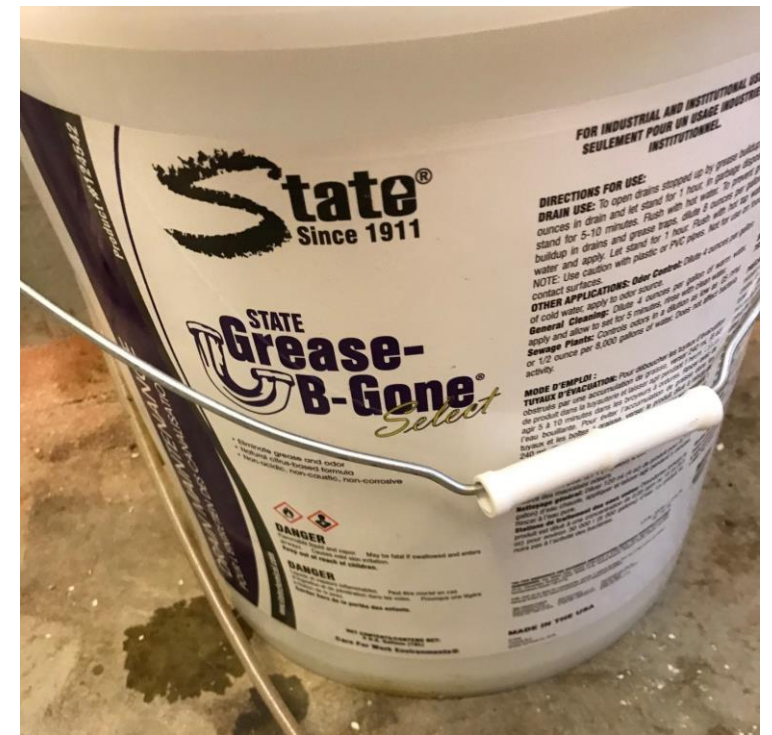
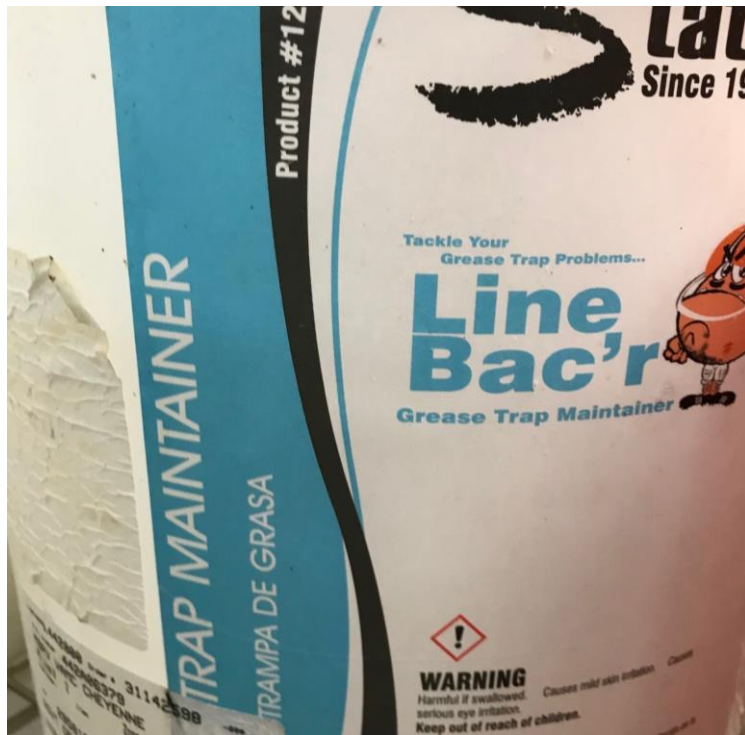
THEIR DEFENSE

- Under the doctrine of sovereign immunity and the Supremacy Clause of the Constitution (U.S. Const. art. VI, cl. 2), the federal government and its activities are free from state regulation unless Congress enacts a law unambiguously consenting to such regulation. *Hancock v. Train*, 426 U.S. 167, 178–81 (1976); 70 Comp. Gen. 153, 155–56 (1990). Therefore, appropriations are not available to pay fines to state or local governments or to pay for federal compliance with state or local laws, unless Congress has enacted specific statutory authority otherwise... The federal government is immune from state or local fines and penalties for the federal government's failure to comply with laws or ordinances. *Missouri Pacific Railroad Co. v. Ault*, 256 U.S. 554, 563–64 (1921). For a federal agency to be liable for a fine or penalty, there must be a waiver of sovereign immunity. See, e.g., *United States Department of Energy v. Ohio*, 503 U.S. 607 (1992)... Absent the requisite statutory waiver of sovereign immunity, the agency's appropriations would be unavailable to pay a fine or penalty. For example, in 65 Comp. Gen. 61 (1985), appropriated funds were unavailable to pay a "fee," which was clearly in the nature of a penalty, imposed by a City of Boston ordinance for equipment malfunctions resulting in the transmission of false fire alarms. See also B-227388, Sept. 3, 1987 (no authority to pay false alarm fines imposed by municipality).



**MET WITH THE
FEDERAL FACILITY & THEIR
LEGAL TEAM**

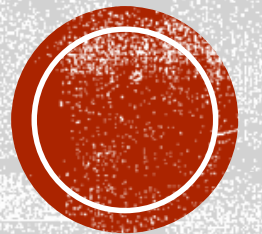




MET WITH STATE CHEMICALS



MET WITH EPA LEGAL COUNCIL



A wooden signpost with three directional signs. The top sign is yellow and points right, labeled 'FUTURE'. The middle sign is dark wood and points left, labeled 'PAST'. The bottom sign is light wood and points right, labeled 'PRESENT'.

FUTURE

PAST

PRESENT

**WHERE ARE
WE NOW?**



APPLICATION OF CWA TO FEDERAL FACILITIES

- Under CWA § 301, it is unlawful for any person to discharge any pollutant into waters of the United States without authorization under specific provisions of the CWA, including § 402 (NPDES) and § 404 (discharge of dredged or fill material). While the definition of “person” (§ 502(5)) **does not include the United States**, pursuant to § 313, federal agencies are required to comply with all Federal and State requirements respecting the control and abatement of water pollution:



EPA ENFORCEMENT

- EPA's primary enforcement authorities are set forth in CWA § 309. EPA is authorized under CWA § 309(a) to issue an order requiring a "person" to comply with specified CWA sections (including section 301, the prohibition against unpermitted discharges, or requirements of permits under section 402 or 404). EPA is also authorized under § 309(d) to issue penalty orders to any "person" who violates specified sections of the CWA, or who violates any permit condition or limitation implementing any such sections, or violates a section 309(a) order.

Date: April 25, 2022

The Honorable Congresswoman Liz Cheney
United States House of Representatives
416 Cannon House Office Building
Washington, DC 20515

Dear Congresswoman Liz Cheney,

I am writing to request your support for strengthening the ability of the City of Cheyenne Board of Public Utilities (BOPU) to implement a more effective Industrial Pretreatment Program (IPP) under the National Pollutant Discharge Elimination System that was created in 1972 by the Clean Water Act.

The BOPU is the Local Control Authority under EPA Region 8. The purpose of this program is to protect critical sanitary sewer infrastructure, the health and safety of the public and those that work on the system, and the wellness of the environment that our wastewater treatment facilities discharge to.

Our system is home to several federal facilities. We have worked closely with one of these facilities over the past two years, and have issued enforcement action due to their noncompliance with our City Code and the Code of Federal Regulation (40 CFR 403), regarding the Effluent Guidelines and Standards for industrial users. The facility did ultimately return to compliance. However, through the process, we were made aware by the EPA General Legal Counsel that according to the Clean Water Act, regulatory agencies at all levels do not have authority to assess civil penalties, that would be considered punitive, against federal facilities. This is due to the fact that the Clean Water Act does not define the Federal Government as a "person", contrary to other environmental laws and acts.

As the Local Control Authority for the EPA, it falls upon us to implement and enforce the rules written in City Code, as well as the Code of Federal Regulations (40 CFR 403), pertaining to industrial users. It is our intent and mission to be fair and equitable when issuing any type of enforcement action. It is our goal to obtain voluntary compliance whenever possible, by administering a fair and unbiased enforcement program. However, the inability to enforce IPP requirements for federal facilities is a vulnerability for our infrastructure and risk to our citizens, employees, and the environment.

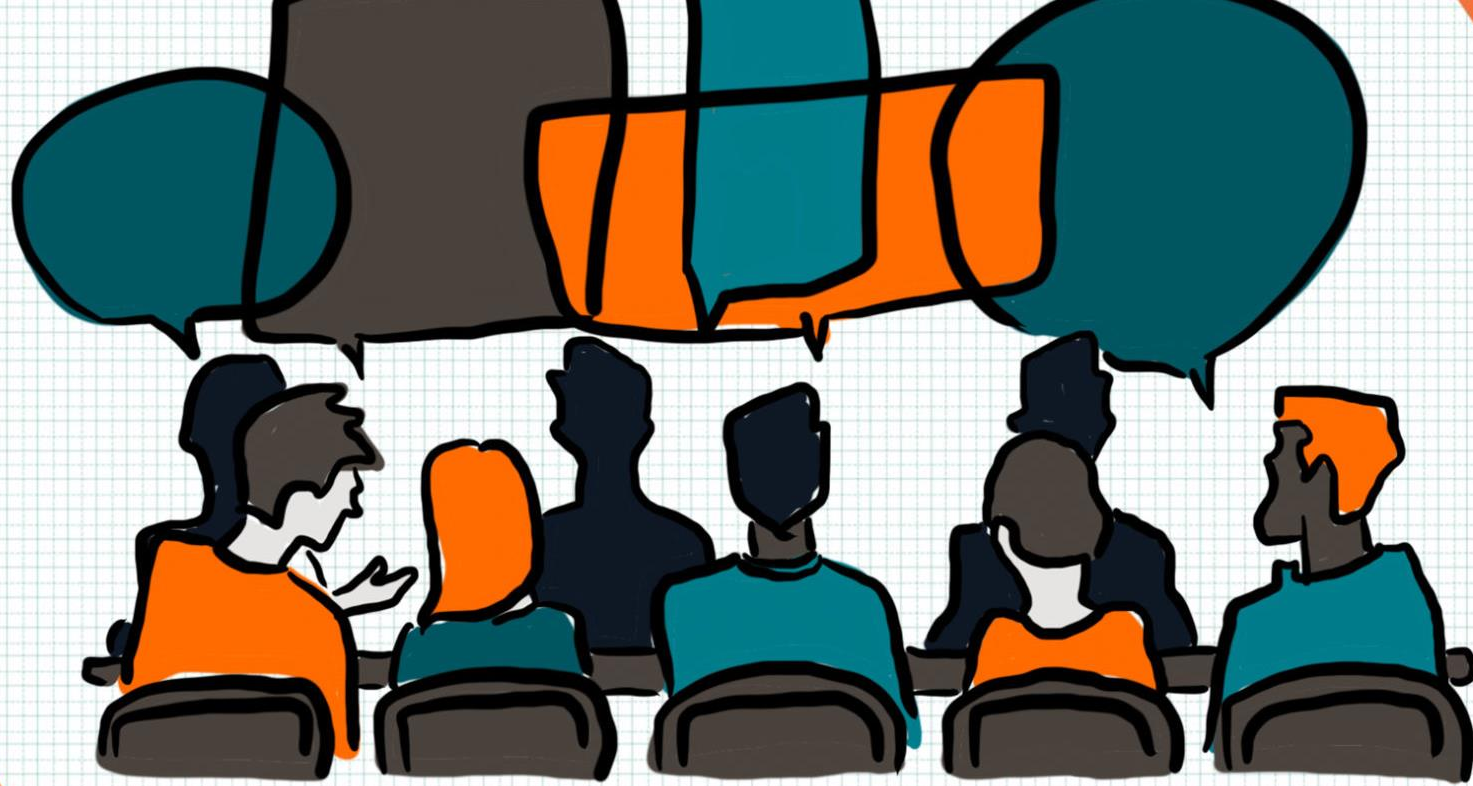
We ask you to consider reviewing this oversight in the Clean Water Act, and pursue the necessary changes, as was done to the Resource Conservation and Recovery Act with the Federal Facility Compliance Act of 1992.

I appreciate your consideration of this matter. I would be happy to discuss this with you to answer any further questions. I can be reached at 307-637-6464 or bbrooks@cheyennebopu.org

Regards,

ACT OF CONGRESS





GROUP DISCUSSION