

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 AUG 22 PM 2:35

FILED  
EPA REGION VIII  
TRAINING CLERK

IN THE MATTER OF: )  
) Docket No. CWA-08-2014-0029  
Arnegard Holdings, LLC )  
13336 26<sup>th</sup> Street NW )  
Arnegard, North Dakota 58835, )  
)  
Arnegard WW Holdings, LLC ) **ADMINISTRATIVE ORDER**  
13336 26<sup>th</sup> Street NW ) **FOR COMPLIANCE ON CONSENT**  
Arnegard, North Dakota 58835, and )  
)  
City of Arnegard )  
211 Highway 85 Frontage )  
Arnegard, North Dakota 58835, ) Proceeding Under Section 309(a) of the  
Respondents. ) Clean Water Act, 33 U.S.C. § 1319(a)

INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by Arnegard Holdings, LLC, Arnegard WW Holdings, LLC, and the City of Arnegard, North Dakota (collectively, Respondents) and the United States Environmental Protection Agency (EPA). The EPA has authority to issue this Consent Order pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the EPA to issue an order requiring compliance by a person found to be in violation of, *inter alia*, section 405 of the Act. This authority has been properly delegated to the undersigned EPA official.
2. The Findings of Fact and of Violation in paragraphs 10 through 26, below, are made solely by the EPA. In signing this Consent Order, the Respondents neither admit nor deny the Findings of Fact and of Violation. Without any admission of liability, the Respondents consent to issuance of this Consent Order and agree to abide by all of its conditions. The Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondents may have with respect to any issue of fact or law set forth in this Consent

Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The Respondents further agree not to challenge the jurisdiction of the EPA or the Findings of Fact and of Violation in any proceeding to enforce this Consent Order or in any action under this Consent Order.

### **STATUTORY AND REGULATORY BACKGROUND**

3. Section 405(d)(1) of the Act directed the Administrator of the EPA to develop and publish “regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.” 33 U.S.C. § 1345(d)(1). The EPA Administrator has promulgated those regulations. They have been codified at 40 C.F.R. part 503. As stated in 40 C.F.R. § 503.1(b) and 40 C.F.R. § 503.7, they apply to any person who, among other things, prepares sewage sludge or applies sewage sludge to land.
4. The state of North Dakota has not obtained primary authority to administer and enforce the sludge management program pursuant to 40 C.F.R. part 501. Consequently, the EPA directly implements the sludge management program in North Dakota.
5. Region 8 of the EPA issued a biosolids general permit, number NDG650000 (the EPA Permit), effective October 19, 2007, for authorizing persons to generate, treat, and/or use or dispose of sewage sludge by means of land application, landfill, and surface disposal. The EPA Permit was renewed on May 15, 2013.
6. According to 40 C.F.R. § 503.3(b), no person shall use or dispose of sewage sludge through any practice for which requirements are established in 40 C.F.R. part 503 except in accordance with the requirements of that regulation.
7. “Sewage sludge” is defined at 40 C.F.R. § 503.9(w) as “solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works [including but not limited

to] domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge.”

8. “Agricultural land” is defined at 40 C.F.R. § 503.11(a) as “land on which a food crop, a feed crop, or a fiber crop is grown. . . includ[ing] range land and land used as pasture.”
9. “Land application” is defined at 40 C.F.R. § 503.11(h), in relevant part, as “the spraying or spreading of sewage sludge onto the land surface . . . or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.”

### **FINDINGS OF FACT AND OF VIOLATION**

10. Respondent Arnegard Holdings, LLC and Respondent Arnegard WW Holdings, LLC (collectively, the Holdings LLCs) are Nevada corporations.
11. Arnegard Holdings LLC (Holdings) is in the business of building and operating worker housing or “man camps.”
12. Arnegard WW Holdings LLC (WW Holdings) is in the wastewater treatment plant operation business.
13. The City of Arnegard (City) is a city created by or under North Dakota state law and is, therefore, a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 503.9(o).
14. Each Respondent is a “person” for purposes of federal enforcement under sections 309 and 502(5) of the Act, 33 U.S.C. §§ 1319 and 1362(5), and 40 C.F.R. § 503.9(q).
15. The City owns and/or operates a wastewater treatment plant (the WWTP), located in Arnegard, North Dakota, which is a “treatment works” as defined in section 212(2)(A) of the Act, 33 U.S.C. § 1292(2)(A), and 40 C.F.R. § 503.9(aa).

16. On October 18, 2012, the City entered into a joint venture agreement with Holdings, under which Holdings would, among other things, operate the WWTP.
17. On June 18, 2013, the City entered into a joint venture agreement with WW Holdings under which WW Holdings would, among other things, operate the WWTP.
18. Under the joint venture agreements referenced in paragraphs 16 and 17, above, Holdings and WW Holdings have been operators of the WWTP.
19. The EPA sent each Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. § 1318, on May 28, 2013, to determine compliance with section 405 of the Act, 33 U.S.C. § 1345, and its implementing regulations at 40 C.F.R part 503.
20. The Holdings LLCs responded to the EPA's information request by a letter dated June 28, 2013.
21. The City responded to the EPA's information request by a letter dated July 1, 2013.
22. In their replies to the EPA's information request, the Respondents indicated that sewage sludge had been removed from two different lagoon cells in the WWTP. For the sludge removed from the first cell, the Respondents indicated a lack of knowledge. For the sludge removed from the second cell, the Respondents stated that it had been removed on February 6, 7, and 8, 2013, and placed on property owned by an individual named Phillip Moen (the Moen Property). Counsel for the Holdings LLCs later indicated that the Moen Property is located at 2588 134 Street in Arnegard, North Dakota. The response from the Holdings LLCs indicated that the sludge from the second cell had been placed in a pit on the Moen Property.
23. Although the EPA's information request asked each Respondent for information on, among other things, the land application rate, the overall gallons applied to each site, the nitrogen requirements for crops or other vegetation grown on each site, copies of sewage sludge sample analyses, a description of how the sludge had been treated, and a description of how the pathogen

and vector attraction reduction requirements of 40 C.F.R. part 503 had been met, no such information was provided.

24. The Respondents are subject to section 405 of the Act, 33 U.S.C. § 1345, and 40 C.F.R. part 503, because they are persons who prepare and/or land apply sewage sludge.
25. By disposing of sludge as described in paragraph 22, above, the Respondents violated the requirements of 40 C.F.R. part 503.
26. Holdings has submitted a letter of intent to the EPA to be covered by the EPA Permit. Holdings has been authorized to land apply sludge according to the EPA Permit, as described in an EPA letter dated November 5, 2013, stating, among other things, that the land application rate is limited to the agronomic rate or a maximum of 10 dry tons per year, whichever is less.

#### **ORDER**

The EPA orders, and the Respondents agree, as follows:

27. The Respondents shall not prepare sewage sludge, apply sewage sludge to land, or dispose of sewage sludge except as in compliance with 40 C.F.R. part 503 and section 405 of the Act, 33 U.S.C. § 1345.
28. The Respondents shall remove the sewage sludge from the pit on the Moen Property and land apply and/or dispose of it in compliance with the NDPDES Permit, the EPA Permit, 40 C.F.R. part 503, and section 405 of the Act, 33 U.S.C. § 1345. This shall include but not be limited to meeting requirements in 40 C.F.R. part 503 for pathogen reduction, vector attraction reduction, maximum annual application rate, and recordkeeping. The Respondents shall begin and complete such removal and land application no later than September 1, 2014, and November 30, 2014, respectively.

29. Within fifteen days of excavating and land applying sewage sludge as directed in paragraph 28, above, the Respondents shall conduct confirmatory sampling to ensure that all sewage sludge has been removed from the pit and adjacent processing area on the Moen Property. The Respondents shall provide the EPA with results of the confirmatory sampling within 15 days after receiving the analytical results. If confirmatory sampling indicates that not all sewage sludge has been removed from the pit and adjacent processing area, the Respondents shall (a) within ten days of receiving the pertinent sample results, perform additional excavation to remove the remaining sewage sludge, (b) within fifteen days after excavation, conduct confirmatory sampling, and (c) within fifteen days of receiving the sample results, provide the results to the EPA. The Respondents shall continue to excavate and perform confirmatory sampling in accordance with this paragraph until sampling indicates that all sewage sludge has been removed from the pit and adjacent processing area.
30. On May 15, 2014, the Respondents submitted a workplan to the EPA describing (a) how they would meet the requirements of paragraph 28, above, including, but not limited to, notifying the EPA of the location of their proposed land application of the sludge, and (b) how they intended to conduct the confirmatory sampling required by paragraph 29, above.
31. As soon as possible following confirmatory sampling that all sewage sludge has been removed from the pit and adjacent processing area, but no later than May 31, 2015, the Respondents shall (a) cover the pit where the sewage sludge referenced in Paragraph 22, above, was placed and (b) restore the pit and the adjacent processing area to their condition immediately prior to the placement of sewage sludge.
32. The Respondents shall provide a report to the EPA within 60 days after land applying the sewage sludge (as directed by paragraph 28, above) describing (a) how their land application complied

with pathogen reduction requirements, the vector attraction reduction requirements, the annual application rate limit, and the recordkeeping requirements of 40 C.F.R. part 503, and (b) the manner in which they covered and restored the pit, as required by paragraph 31, above.

33. The Respondents shall send all written reports, information, and related correspondence required by this Consent Order to:

Peggy Livingston (8ENF-L)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

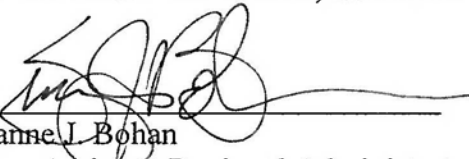
34. All reports and information required by this Consent Order shall include the certification statement set forth in Exhibit 1 for the Respondent submitting the report or information. The certification shall be signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(1) of a responsible corporate officer in the case of either Holdings LLC or an individual meeting the definition of a principal executive officer or ranking elected official for the City. Each Respondent shall submit a separate certification.
35. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondents to penalties as provided under the section 309(d) of the Act, 33 U.S.C. § 1319(d).
36. This Consent Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(g) of the Act, 33 U.S.C. § 1319(g), as adjusted for inflation by 40 C.F.R. part 19, authorizes administrative penalties of up to \$16,000 per day for each day for which a violation continues. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$37,500 per day for each violation of the Act. Section

309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

37. Compliance with this Consent Order shall not be construed to relieve the Respondents of their obligation to comply with any applicable federal, state, or local law, permit, or regulation.
38. Each undersigned representative of a Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the relevant Respondent to the terms and conditions of this Consent Order.
39. This Consent Order shall be effective upon each party's receipt of a fully executed copy.
40. This Consent Order may be signed in multiple counterparts.

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

Date: August 22, 2014

By:   
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

**ARNEGARD HOLDINGS, LLC.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joseph Kachuroi, Manager of Down Flow, LLC,  
which is a Managing Member of Arnegard Holdings, LLC  
P.O. Box 501  
Arnegard, North Dakota 58835



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

Date: \_\_\_\_\_

By: \_\_\_\_\_

Suzanne Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

**ARNEGARD HOLDINGS, LLC.**

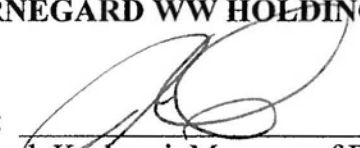
Date: 7-22-14

By: \_\_\_\_\_

Joseph Kachuroi, Manager of Down Flow, LLC,  
which is a Managing Member of Arnegard Holdings, LLC  
P.O. Box 501  
Arnegard, North Dakota 58835

**ARNEGARD WW HOLDINGS, LLC.**

Date: 7-22-14

By:   
Joseph Kachuroi, Manager of Down Flow, LLC,  
which is a Managing Member of Arnegard Holdings, LLC  
P.O. Box 501  
Arnegard, North Dakota 58835

**CITY OF ARNEGARD**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jordan J. Evert, Attorney  
Furuseh, Kalil, Olson & Evert, P.C.  
612 4<sup>th</sup> Street East  
P.O. Box 417  
Williston, North Dakota 48802-0417



**ARNEGARD WW HOLDINGS, LLC.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joseph Kachuroi, Managing Member  
P.O. Box 501  
Arnegard, North Dakota 58835

Date: July 14, 2014

**CITY OF ARNEGARD**

By:   
Jordan J. Evert, Attorney  
Furuseh, Kalil, Olson & Evert, P.C.  
612 4<sup>th</sup> Street East  
P.O. Box 417  
Williston, North Dakota 48802-0417

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT** were hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following Friday, August 22, 2014 as indicated below:

to

Tami Norgard, Attorney for  
Arnegard Holdings, LLC and  
Arnegard WW Holdings, LLC  
Vogel Law Firm  
218 NP Avenue  
P.O. Box 1389  
Fargo, ND 58107-1389  
By Certified Mail, Return Receipt Requested  
No. 7008 3230 0003 0726 0221

and

Jordan J. Evert, Attorney for  
City of Arnegard  
Furuseth, Kalil, Olsen & Evert. P.C.  
612 4<sup>th</sup> Street East  
P.O. Box 417  
Williston, ND 58802-0417  
By Certified Mail, Return Receipt Requested  
No. 7008 3230 0003 0726 0238

Date: Friday, August 22, 2014

By: Dayle Aldinger  
Dayle Aldinger

**Exhibit 1 (page 1 of 3)**

**Statement of Certification**

Arnegard Holdings LLC

I 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 who manage the system, or those persons directly responsible for gathering the information, I certify that 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 and imprisonment for knowing violations.

---

Signature

---

Date

---

Printed Name

---

Official Title

**Exhibit 1 (page 2 of 3)**

**Statement of Certification**  
Arnegard WW Holdings LLC

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Official Title

**Exhibit 1 (page 3 of 3)**

**Statement of Certification**  
City of Arnegard

I 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 who manage the system, or those persons directly responsible for gathering the information, I certify that 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 and imprisonment for knowing violations.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Official Title