

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2016-0054
)	
The Prairie Band Potawatomi Nation)	
)	
)	
Respondent)	FINDINGS OF VIOLATION AND
)	ORDER FOR COMPLIANCE ON
)	CONSENT
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)		

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order”) are made and issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the Prairie Band Potawatomi Nation, (“Respondent” or “PBPN”). Respondent is the owner and/or operator of a Tribal Administrative and Government Area Wastewater Treatment Facility (“WWTF”) located in the City of Mayetta, Jackson County, Kansas.

3. The EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent through entering into this Order to address noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System (“NPDES”) permits. As set forth in this Order on Consent, the Parties have reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2)

agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a NPDES permit.

7. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Respondent's NPDES permit authorizes Respondent to discharge pollutants only from specified point sources for the discharges from a wastewater treatment facility, subject to the effluent limitations and conditions set forth in the Permit.

10. Because Respondent’s facilities are located in Indian Country, as that term is defined in 18 U.S.C. § 1151, the EPA is the proper authority to administer the federal NPDES program pursuant to Section 402 of the CWA.

Factual Background

11. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. The Respondent has two facilities; the PBPN Q Road WWTF located one mile west of Mayetta, Kansas, (“Q Rd. WWTF”) and the PBPN K Road WWTF addressed at 8200 K Road Lane, Mayetta, Kansas, (“K Rd. WWTF”). Both facilities (“WWTFs”) are located within the Prairie Band Potawatomi Nation Tribal Reservation, which is Indian Country, as defined in 18 U.S.C. § 1151.

13. The Respondent owns and operates the WWTFs that receive and treat wastewater from various domestic and commercial and/or industrial sources.

14. The Q Rd. WWTF discharges from designated outfall 001, into an unnamed tributary of the Big Elm Creek, a tributary of the Little Soldier Creek, to Soldier Creek, which empties into the Kansas River. The K Rd. WWTF discharges from designated outfall 001 to an unnamed tributary of James Creek, to Soldier Creek, which empties into the Kansas River. The unnamed tributaries are "navigable waters," as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15. The WWTFs are "point sources" that "discharges pollutants," as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12).

16. Respondent's discharges of pollutants from its WWTFs require a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17. On April 5, 2012 the EPA issued a Compliance Assistance Plan ("CAP") to the PBPN WWTFs. The CAP was issued in an effort to bring the Respondent into compliance with its NPDES permits and the CWA.

18. The CAP included compliance actions and implementation plans and timeframes for the tribe to achieve compliance with its NPDES permits and the CWA.

19. The CAP was terminated October 31, 2012 following a letter submitted by PBPN on May 18, 2012, describing action items and implementation plans to achieve compliance.

20. On November 8, 2012, the EPA issued to the Respondent NPDES Permit No. KS0096202 for the K Rd. WWTF (hereafter "NPDES permit") for discharges from its WWTF to the unnamed tributary to James Creek. This NPDES permit expires November 8, 2017. On November 8, 2012, the EPA issued to the Respondent NPDES Permit No. KS0096199 for the Q Rd. WWTF for discharges from its WWTF to the unnamed tributary to Big Elm Creek. This NPDES permit expires November 8, 2017.

21. On January 25-27 and February 3, 2016, the EPA conducted Compliance Sampling Inspections of the PBPN's WWTFs (hereafter "the EPA inspections") in order to determine their compliance with the NPDES permits and requirements of the CWA, 33 U.S.C. § 1311, *et seq.*

22. At the conclusion of the Inspection, the EPA inspector provided the PBPN a Notice of Potential NPDES Permit Violations ("NOPV"), which described the inspector's preliminary observations regarding potential violations, including, but not limited to, effluent limit exceedances, sample collection and analysis deficiencies, operation and maintenance deficiencies, and presence of solids in the receiving stream.

23. By letter dated February 12, 2016, PBPN provided additional information to the EPA inspector regarding the matters identified in the NOPV.

Findings of Violation

Count 1: Failure to Comply with Effluent Limitations

24. Respondent's NPDES permit for the K Rd. WWTF establishes effluent limitations for Five Day Biological Oxygen Demand ("BOD"), *E. coli*, Total Suspended Solids ("TSS"), and Nitrogen as Ammonia.

25. During the EPA inspection of the K Rd. WWTF, the inspector collected wastewater samples from Outfall 001. These samples failed to meet the NPDES permit limits for BOD and TSS.

26. Between January 2012 and November 2015, Respondent violated its K Rd. WWTF NPDES permit limit for BOD eight times.

27. Between January 2012 and November 2015, Respondent violated its K Rd. WWTF NPDES permit limit for *E. coli* six times.

28. Between January 2012 and November 2015, Respondent violated its K Rd. WWTF NPDES permit limit for TSS seven times.

29. Between January 2012 and November 2015, Respondent violated its K Rd. WWTF NPDES permit limit for ammonia two times.

30. Respondent's NPDES permit for the Q Rd. WWTF establishes effluent limitations for Five Day Biological Oxygen Demand, *E. coli*, Total Suspended Solids, Total Residual Chlorine ("TRC"), and Nitrogen as Ammonia.

31. During the EPA inspection of the Q Rd. WWTF, the inspector collected wastewater samples from Outfall 001. These samples failed to meet the NPDES permit limit for BOD.

32. Between January 2013 and November 2015, Respondent violated its Q Rd. WWTF NPDES permit limit for BOD seven times.

33. Between January 2013 and November 2015, Respondent violated its Q Rd. WWTF NPDES permit limit for *E. coli* 18 times.

34. Between January 2013 and November 2015, Respondent violated its Q Rd. WWTF NPDES permit limit for TSS five times.

35. Between January 2013 and November 2015, Respondent violated its Q Rd. WWTF NPDES permit limit for ammonia one time.

36. Between January 2013 and November 2015, Respondent violated its Q Rd. WWTF NPDES permit limit for TRC one time.

37. Respondent's failure to comply with the PBPN's NPDES permit effluent limitations as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Properly Operate and Maintain the WWTF

38. Part B.1 of the Standard Conditions of both PBPN's NPDES permits require the permittee to properly operate and maintain at all times the facilities and systems of treatment and control and related appurtenances that are installed or used by the permittee to achieve compliance with the conditions of this permit.

39. Part B.6 of the Standard Conditions of Respondent's NPDES permits, "Removed Substances," prohibits the discharge of collected screenings, grit, solids, and/or other pollutants removed in the course of treatment or control of wastewaters to waters of United States.

40. The EPA inspection found that the K Rd. WWTF's bar screen debris and surface skimming material was improperly disposed on the ground near the receiving stream of Outfall 001. Such placement of pollutants will lead to discharges into the unnamed tributary to James Creek.

41. Part D. of the Supplemental Conditions of the K Rd. NPDES permit, "Facility Maintenance," states the wastewater treatment facility including aerations tanks, clarifiers, as well as the site surrounding the facility shall be maintained in proper operating condition in a manner to meet permit requirements and not result in an unauthorized discharge.

42. The EPA inspection found a high sludge blanket in the K Rd. WWTF's Clarifier B, which was within a few inches of the surface of the water, evidencing excessive sludge in the Clarifier, and not properly operating and maintaining the WWTF to prevent unauthorized discharges and to achieve compliance with the permit.

43. Part B.1 of the Standard Conditions of both PBPN's NPDES permits require the permittee to properly operate and maintain at all times, which includes adequate laboratory controls and appropriate quality assurance procedures.

44. The EPA inspection found that operational sludge testing procedures were not being conducted in a manner to maintain the WWTFs and control sludge, including, Mixed Liquor Suspended Solids ("MLSS") concentration test was not being conducted.

45. Part C.3 of the Standard Conditions of the Q Rd. NPDES permit requires that flow measurement devices be calibrated and maintained to ensure the accuracy of the measurements is consistent with the accepted capability of the type of device.

46. The EPA inspection found that flow calibration at the Q Rd. WWTF was not being conducted.

47. The PBPB's failure to comply with the PBPB's NPDES permit Operation and Maintenance requirements as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3: Unpermitted Discharges

48. The PBPB's NPDES permit prohibits the discharge of pollutants except in compliance with the effluent limits listed for Outfall 001. Part C, "Specific Effluent Limitations and Self-Monitoring Requirement" further prohibits the discharge of floating solids.

49. The EPA inspection of the K Rd. WWTF found significant layers of sludge solids in the receiving stream and on the ground around the receiving stream from Outfall 001. Sludge solids were also documented and as far as 85 yards downstream of Outfall 001.

50. The PBPB's discharge of pollutants from the K Rd. WWTF to the receiving stream from Outfall 001 described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order for Compliance

51. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED and AGREES to take the actions described below.

52. Respondent shall ensure that its WWTF Operator is certified by the State of Kansas at the appropriate level by December 31, 2016.

53. Within 120 days of the effective date of this Order, Respondent shall take appropriate corrective action necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited above, prevent unauthorized discharges, and to come into compliance with all of the applicable requirements of its NPDES permits. Within 120 days, Respondent shall also provide EPA a written description of the actions it has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

54. Respondent shall submit to EPA all submittals by electronic mail until written termination of the Order to:

acord.angela@epa.gov
Angela Acord, or her successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

55. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

56. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

57. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

58. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

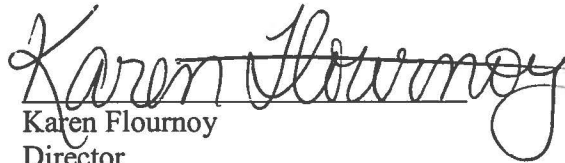
Effective Date

59. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.


Termination

60. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 29th day of August, 2016.



Karen Flournoy
Director
Water, Wetlands and Pesticides Division


Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, the Prairie Band Potawatomi Nation:

 _____
Signature Date 8/10/16

Liana Onnes
Name

Tribal Council Chairwoman
Title