

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
**The Village of Winnebago, Nebraska** ) Docket No. CWA-07-2019-0192  
 )  
 )  
 )  
 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 Enforcement and Compliance Assurance Division.
2. Respondent is the Village of Winnebago, Nebraska (“Respondent” or “Village”), which owns and operates a Wastewater Treatment Facility (“WWTF”).
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”) permit. 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” 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, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

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, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. 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**

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

10. The Respondent is and was at all times relevant to this action, the owner and/or operator of the Winnebago Wastewater Treatment Facility (“WWTF” or “facility”) located approximately one quarter mile west of Winnebago, Nebraska. The WWTF is located within the Winnebago Tribal Reservation, which is Indian Country, as defined in 18 U.S.C. § 1151.

11. The WWTF receives and treats wastewater from various domestic and/or commercial sources in and near the Village of Winnebago, Nebraska.

12. The WWTF discharges from designated outfall 001A or 001B, into Omaha Creek, which discharges into the Missouri River. Omaha Creek and the Missouri River are “navigable waters,” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

13. The WWTF is a “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), and 40 C.F.R. § 122.2.

14. Respondent’s discharges of pollutants from its WWTF requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

15. The EPA issued NPDES Permit No. NE0113212 (“Permit”) to the Respondent, effective from January 1, 2012, through December 1, 2017, that authorizes discharges from the WWTF to

Omaha Creek subject to conditions and limitations set forth in the Permit. The Permit has been administratively extended pending permit renewal.

16. On June 26-27, 2018, the EPA conducted a Compliance Sampling Inspection of the WWTF (hereafter "Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to determine whether the WWTP was in compliance with its NPDES permit and the CWA.

17. During the Inspection, the EPA inspector reviewed and collected copies of Respondent's records relating to the Permit, observed the facility and the locations from which wastewater is discharged, and collected samples of discharges.

18. At the conclusion of the Inspection, the EPA inspector provided the Respondent a Notice of Potential Violation ("NOPV"), which described the inspector's preliminary observations regarding potential violations, including, but not limited to, failure to measure effluent and influent flow, failure to properly maintain vegetation around six cells, failure to collect representative influent samples due to water treatment plant backwash and reporting deficiencies.

19. The Village of Winnebago provided additional information to the EPA inspector regarding the matters identified in the NOPV in an undated letter received by the EPA on or about July 8, 2018.

### **Findings of Violation**

#### **Count 1: Failure to Comply with Effluent Limitations**

20. Part C of Respondent's Permit establishes effluent limitations for Outfall 001A for the pollutants, including weekly average and monthly average concentration limits for Five Day Biochemical Oxygen Demand ("BOD<sub>5</sub>") and Total Suspended Solids ("TSS"), minimum concentration limits for Dissolved Oxygen ("DO"), geometric mean and single sample maximum concentration limitations from May through September for *E. coli*, and daily maximum and monthly average concentration limits for Nitrogen as Ammonia. The Permit also requires daily monitoring of the effluent flow from Outfall 001A and establishes monthly average minimum percent removal limitations for BOD<sub>5</sub> and TSS.

21. Based on observations documented during the EPA Inspection, review of information provided by the Facility, effluent monitoring data for the Facility, and other relevant information, the EPA finds that in the 36 months from January 2016 through December 2018, the Facility violated the effluent limitations for Outfalls 001A set forth in its Permit as follows:

- a. BOD<sub>5</sub> percent removal in two months, April 2016 and March 2018;
- b. *E. coli* single sample limitation in six months, July and August 2016, May, August and September 2017, and August 2018;
- c. TSS monthly average limitation in ten months, February, March, April and August

- 2016, January, August, September and October 2017, and March and September 2018;
- d. TSS weekly average limitations in eight months, February, March, April and August 2016, January, August and September 2017, and March 2018;
  - e. TSS percent removal in eleven months, February, March, April, July, August and September 2016, January, September and October 2017, and March and September 2018;
  - f. Ammonia monthly average limitations in sixteen months, January, February, October, November and December 2016, January, February, March, November and December 2017, and January, February, March, October, November and December 2018;
  - g. Ammonia daily maximum limitations in five months, December 2016, January 2017, and February, November and December 2018; and
  - h. Dissolved oxygen minimum limitation in six months, June and July 2016, January, July and August 2017, and February 2018.

22. The EPA inspector noted that the Winnebago WWTP appears to be receiving excess flow, which may be caused by inflow or infiltration from the collections system, and that the TSS samples taken on the same day as a batch discharge of filter backwash from the Village's water treatment plant may not result in representative sampling results.

23. In its response to the NOPV following the Inspection, the Respondent stated that it would ensure that influent sampling was performed in a manner to ensure representative sampling.

24. Each alleged incident of Respondent's failure to comply with the effluent limitations set forth in its Permit, as described in Paragraph 21, above, is a violation of its Permit and Section 402 of the CWA, 33 U.S.C. § 1342.

### **Count 2: Failure to Monitor and Report**

25. Section C of Respondent's Permit, including paragraph 4 and Tables 1, 2 and 3, requires monitoring of influent and effluent flow on a daily basis, and sampling and analysis of all other pollutant parameters on at least a monthly basis.

26. Section C of Respondent's Permit, paragraph 2, and Appendix A, paragraph D.4., Respondent is required to submit the results for each month on a discharge monitoring reports (DMRs) form, and to submit DMRs for months within each quarter on the 28<sup>th</sup> day of the month following the reporting period.

27. The EPA issued a Notice of Violation ("NOV") to Respondent on May 30, 2017, for failure to submit DMRs.

28. During the Inspection, the EPA inspector noted the following deficiencies with regard to Respondent's monitoring and reporting requirements under the Permit:

- a. The Respondent failed to routinely read, record and report data from the influent flow meter on a daily basis, as required by the Permit;
- b. The Respondent failed to properly measure and report effluent flow data, as required by the Permit; and
- c. The Respondent failed to submit DMRs for June and July 2016, and January and February 2017, and had submitted some DMRs late.

29. In its response to the NOPV following the Inspection, the Respondent stated that it had begun to monitor and record influent and effluent flows, as instructed by the EPA inspector, and requested training from the EPA regarding electronic DMR reporting to ensure timely and complete reporting.

30. Each alleged failure of the Respondent to comply with the monitoring and reporting requirements of its Permit, as described in Paragraph 28, above, is a violation of its Permit and Section 402 of the CWA, 33 U.S.C. § 1342.

### **Count 3: Failure to Properly Operate and Maintain the WWTF**

31. Section D of Respondent's Permit, Supplemental Conditions, Paragraph 1, Facility Maintenance, requires Respondent to maintain the lagoon facility to ensure the integrity of the lagoons and the site around the facility in a manner that will allow adequate inspection and oversight of the facility. Maintenance activities to facilitate adequate inspection and oversight shall include, but not limited to, regular mowing of the area around the lagoons and the grassed dikes to prevent growth of trees or woody plants.

32. Attachment A of Respondent's Permit, Standard Conditions, Part B.1, Proper Operation and Maintenance, requires Respondent to, at all times, properly operate and maintain all facilities and systems of treatment and control, which includes adequate laboratory controls and appropriate quality assurance procedures.

33. During the EPA Inspection, the inspector identified the following deficiencies in Respondent's operation and maintenance of the facility:

- a. Respondent failed to properly maintain vegetation around the lagoon cells; and
- b. The V-notch weir to measure effluent flow was not positioned correctly and Respondent was not properly measuring and reporting effluent flow.

34. In its response to the NOPV following the Inspection, the Respondent stated that it plans to mow the area around the lagoons and would try to continue proper maintenance, and that, with the EPA inspector's assistance, would maintain proper positioning of the V-notch weir to accurately measure effluent flow.

35. Each alleged failure of the Respondent to properly operate and maintain its WWTP as required by its Permit, as described in Paragraph 33, above, is a violation of its Permit and Section 402 of the CWA, 33 U.S.C. § 1342.

### **Order for Compliance**

36. Based on the EPA Findings set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), the EPA hereby ORDERS, and the Village hereby AGREES, to take the actions described below.

37. The Village shall immediately take appropriate actions necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited above, and to come into compliance with the terms and conditions of its NPDES permit. Recommendations for improving WWTP operation, maintenance and performance are attached at Appendix A of this Order. At a minimum, the Village shall:

- a. Accurately monitor and record WWTP influent and effluent flows;
- b. Operate and maintain the WWTP, including inspecting and mowing the lagoon berm, maintaining and calibrating the influent and effluent flow measuring devices, maintaining WWTP piping, equipment and other structures, and ensuring WWTP staff are properly trained; and
- c. Enter all monitoring and sample analysis results data into the NetDMR system.

38. By October 1, 2019, the Village shall retain the services of a qualified engineer or wastewater specialist to assist the Village in identifying and addressing needed infrastructure, operational and management changes for the WWTP and sewer collection system. The issues to be considered during this assessment should include, but are not limited to:

- a. Assessment of the WWTP to ensure all equipment and facilities are in good repair and functioning appropriately, and operational controls are efficient and effective, to achieve compliance with NPDES permit limitations;
- b. Review and adjustment, as appropriate, of the drinking water treatment plant's backwash discharges to the WWTP;
- c. Assessment of whether the variability of effluent quality and frequent effluent violations is caused by improper operation/maintenance of the WWTP and/or hydraulic overloading, including but not limited to, the WWTP from

inflow/infiltration from the collection system, and identification of necessary corrective measures;

- d. Determination of whether the WWTP has adequate capacity to treat wastewater from any additional service connections, and if not, assessment of changes that need to be made to the WWTP and/or collection system before additional discharges can be accommodated;
- e. Adoption of a Sewer Use Ordinance that, among other requirements, describes the discharges to the sewer collection system that are allowed, requires prior approval by the Village before connecting new sources to the sewer collection system, requires that all connections to the sewer collection system comply with appropriate plumbing and other applicable standards, and specifically identifies prohibited discharges to the sewer collection system, such as:
  - i. storm water, ground water, surface water and cooling water, as well as connections to the sewer collection system from roof drains, parking lot drains, sump pumps and wells;
  - ii. hauled waste and/or batch discharges to the sewer collection system (e.g., dumping into manholes and septic tank clean-outs), except with express advance written permission from the Village;
  - iii. fats, oils and grease (e.g., from restaurants); and
  - iv. discharge of pollutants that are not treatable by the WWTP, may cause damage to the collection system, the WWTP, or may harm WWTP personnel;
- f. Development of a sewer collection system inspection, cleaning and maintenance program to systematically inspect, clean and repair or replace a reasonable percentage of the collection system each year; and
- g. Review of sewer user fees, including fees paid by collection systems owned by another entity that discharge to the Village's WWTP (e.g., the sewer collection system and pump stations owned and operated by the Winnebago Tribe), and adjustment of those fees, as necessary, to ensure the fees are fair, reasonable and adequate to fund sewer collection system and WWTP expenses.

39. By February 1, 2020, the Village shall submit to the EPA a written progress report describing the actions it has taken since the effective date of the Order to correct the deficiencies and eliminate and prevent recurrence of the violations cited above. The report shall include:

- a. A description of any physical changes or improvements to the WWTP structures, including, but not limited to, the headworks and influent structure, the lagoon system, and the effluent structure;
- b. A statement from the Village's consultant description of the progress in to identifying and addressing needed infrastructure, operational and management changes for the WWTP and sewer collection system, as required by Paragraph 38, above; and

- c. A copy of all logs, checklists or other records used to document maintenance activities for the lagoon system, including the date and personnel involved in each activity, such as mowing events, lagoon inspections, maintenance and calibration of the influent and effluent flow measuring devices, equipment maintenance on other WWTP structures, and WWTP staff training.

40. The Village shall submit semiannual progress reports describing its continuing work to comply with the terms and conditions of its Permit since submittal of the previous report to the EPA. The semiannual reports shall be submitted to the EPA by no later than August 1, 2020, February 1, 2021, and August 1, 2021. Each semiannual progress report shall include the information listed in Paragraph 39, subparagraphs a through c, above, and any additional information regarding actions the Village has taken to achieve and maintain compliance with its NPDES Permit.

41. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 43, below, shall be submitted by electronic mail to:

*hamera.don@epa.gov*  
Don Hamera, or his successor  
U.S. Environmental Protection Agency – Region 7  
Enforcement and Compliance Assurance Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

42. 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 to the address provided above.

43. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

*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, 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.*



## **General Provisions**

### **Effect of Compliance with the Terms of this Order for Compliance**

44. 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.

45. 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**

46. 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**

47. 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**

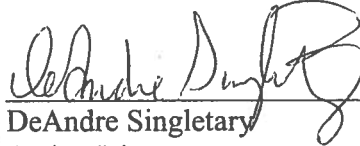
48. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.

### **Termination**

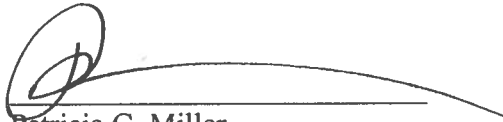
49. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

**For the U.S. Environmental Protection Agency, Region 7:**

Issued this 3<sup>rd</sup> day of June, 2019.



DeAndre Singletary  
Acting Director  
Enforcement and Compliance Assurance Division



Patricia G. Miller  
Office of Regional Counsel

**For the Respondent, the Village of Winnebago:**

Ronald R. Whitebear  
Signature

5/30/2019  
Date

Ronald R. Whitebear  
Name

Chairman Winnebago Village  
Title

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

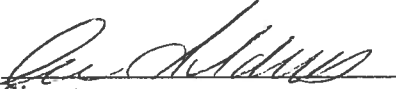
I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Ronald R. Whitebear  
Chairperson, Board of Trustees  
Village of Winnebago  
P.O Box 683  
Winnebago, Nebraska 68071

And by email to:

Tyren L. Wolfe  
Acting Clerk/Treasurer  
Village of Winnebago  
*tyrenlwolfe@gmail.com*

10/3/2019  
Date

  
Signature

## APPENDIX A

### Recommendations for Improving WWTP Operation, Maintenance and Performance

#### OPERATION AND MAINTENANCE CHECKLISTS OR LOGS

Prepare a checklist or log for use by WWTP personnel to ensure correct and consistent operation and maintenance of the WWTP. The checklist should include daily, weekly, monthly and annual activities necessary and appropriate for proper WWTP operation and maintenance. As each activity is completed, it should be checked off, initialed and dated by the person performing the task.

Activities and tasks to be tracked should include, but not be limited to:

- daily monitoring and recording WWTP influent and effluent flow
- periodic maintenance and calibration of the influent and effluent flow measuring devices
- annual calibration of main lift station
- periodic inspection of all WWTP equipment and structures, lagoon operation, and lagoon berm integrity
- lagoon berm mowing
- periodic maintenance activities for all WWTP equipment and structures
- WWTP staff training
- timely collect and analyze samples for all pollutant parameters as required by the NPDES permit
- timely enter all sample results and monitoring information into NetDMR by dates specified in the NPDES permit (28<sup>th</sup> day of January, April, July and October)
- perform at least semiannual direct oversight by the Village Board of Trustees of WWTP operation and maintenance