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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2022-0063
Wood River Wastewater Treatment Facility	)	
	)	FINDINGS OF VIOLATION AND
	)	ORDER FOR COMPLIANCE ON
	)	CONSENT
	)	
Respondent	)	
	)	
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 on Consent”) 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 Wood River Wastewater Treatment Facility is a Publicly Owned Treatment Works (“POTW”) owned and operated by the city of Wood River, Nebraska.

3. EPA and Respondent enter into this Section 309(a)(3) Order in order to carry 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 Respondent’s alleged noncompliance with the CWA and violation of National Pollutant Discharge Elimination System (“NPDES”) Permit No. NE0021661. As set forth in this Order on Consent, the Parties have amicably reached an agreement regarding the timeframes for Respondent to attain compliance with the CWA and the NPDES permit.

5. By entering into this Order on Consent, 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 they 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, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged in accordance with the terms of an NPDES permit issued pursuant to that Section.

7. To implement Section 402 of the CWA, 33 U.S.C. § 1342, the 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. As defined by 40 C.F.R. § 403.3(q), a POTW is a treatment works owned by a State, municipality, or other political subdivision of a State that includes “any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature” as well as “sewers, pipes and other conveyances” that convey wastewater to a POTW.

9. The Nebraska Department of Environment and Energy (“NDEE”) is the state agency in Nebraska with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations. EPA retains concurrent enforcement authority with authorized state programs for violations of the CWA.

10. Pursuant to Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1), the EPA promulgated regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Part 503 (the “Sludge Management Program”). These regulations establish recordkeeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

### **EPA's General Allegations**

11. Respondent is a political subdivision of a State, so is a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. Respondent is the owner and/or operator of a POTW in Wood River, Nebraska, that includes a wastewater treatment facility (“WWTF”), consisting of a primary clarifier system, two rotating biological contractors, a final clarifier system, sludge holding tanks, and an effluent channel listed as Outfall 001.

13. The POTW discharges to the Wood River, a “navigable water” as defined by CWA § 502(7), 33 U.S.C. §1362(7).

14. The POTW is a “point source” that “discharges pollutants” to “navigable waters” of the United States, as these terms are defined by Section 502(14), (12), and (7) of the CWA, 33 U.S.C. § 1362(14), (12), and (7), respectively.

15. On December 11, 2015, the NDEE issued NPDES permit number NE0021661 to Respondent for the POTW pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“2021 NPDES Permit”), which was effective through December 31, 2020. On January 1, 2021, NDEE renewed Respondent’s NPDES permit effective through December 31, 2025. Appendix A of Respondent’s NPDES permit requires Respondent to comply with all conditions of the permit and that any permit noncompliance constitutes a violation of the CWA.

16. Between August 9 and 12, 2021, EPA performed a Compliance Sampling Inspection of Respondent’s WWTF (“Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

17. During the Inspection, the EPA inspector reviewed documents, including facility discharge monitoring report (DMR) data, observed the facility, and collected influent and effluent samples.

18. Respondent provided information to the inspector by letter dated August 24, 2021, following the Inspection.

### **EPA’s Findings**

#### **Count 1**

#### **Failure to Comply with Effluent Limitations**

19. Part I of Respondent’s NPDES permit sets effluent limits for Outfall 001, including but not limited to, Ammonia, Biochemical Oxygen Demand (BOD), and Total Suspended Solids (TSS). The permit also requires a minimum 85% removal of BOD and TSS.

20. Based on a review of Respondent’s DMR data, Respondent exceeded its NPDES permit effluent limit as follows:

- a. Ammonia: 45 times between January 2018 and July 2021
- b. BOD: Two times in June 2020 and June 2021
- c. TSS: Four times in June 2020, May 2021, and June 2021

21. Based on a review of Respondent's DMR data, Respondent failed to achieve a minimum 85% removal for both BOD and TSS in June 2020.

22. Samples collected during EPA's inspection showed an exceedance for ammonia on August 10, 2021.

23. Each failure to comply with NPDES permit effluent limitations is a violation of the limitations and conditions of the applicable NPDES permit and, as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

### **Count 2**

#### **Failure to Comply with Monitoring and Reporting Requirements**

24. Part I of Respondent's NPDES permit specifies monitoring and reporting requirements for Outfall 001, including but not limited to, BOD and TSS.

25. Based on a review of Respondent's DMR data the facility was improperly reporting the monthly average for BOD and TSS as the weekly and monthly average since at least 2018.

26. Each failure to comply with NPDES permit monitoring and reporting requirements is a violation of the limitations and conditions of the applicable NPDES permit and, as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 3**

#### **Failure to Follow Approved Test Procedures**

27. Appendix A, Part 12(d) of Respondent's NPDES permit requires Respondent to monitor according to test procedures approved under NDEE Title 119, Chapter 27. NDEE Title 119, Chapter 27 incorporates by reference the requirements found in 40 C.F.R. Part 136.

28. During the EPA inspection, the inspector observed that Respondent was not chilling samples as they are collected, which is a requirement under NDEE Title 119, Chapter 27 and 40 C.F.R. § 136(b)(10).

29. The failure to comply with NPDES permit required test procedures is a violation of the limitations and conditions of the applicable NPDES permit and, as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Count 4**

#### **Failure to Comply with Biosolids Requirements**

30. Part III of Respondent's NPDES permit requires Respondent to comply with biosolids requirements found in 40 C.F.R. Part 503, which require in part that Respondent calculate agronomic rates or cumulative loading rates prior to land application and that sewage sludge be incorporated into the soil within six hours after application to or placement on the land.

31. During the EPA inspection, the plant operator confirmed that Respondent does not calculate agronomic rates or cumulative loading rates prior to land application and that sewage sludge is not incorporated into the soil within six hours after application.

32. Each failure to comply with NPDES permit biosolids requirements is a violation of the limitations and conditions of the applicable NPDES permit and, as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p). Failure to comply with biosolids requirements in 40 C.F.R. Part 503 are also violations of Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1).

### **Count 5 Failure to Operate and Maintain**

33. Appendix A, Part 7 of Respondent's NPDES permit requires Respondent to operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed and used by Respondent to achieve compliance with the conditions of its NPDES permit.

34. During the EPA inspection, the inspector observed during his inspection of the primary clarifier that the weir baffle was completely plugged with solids, which may result in the passage of solids through the WWTF. The sewer operator affirmed that the weir baffle is not routinely cleaned out. Further, the EPA inspector identified that the facility pH buffer had expired in November 2020, which may result in faulty sampling results.

35. Each failure to properly operate and maintain the WWTF is a violation of the limitations and conditions of the applicable NPDES permit and, as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **Reasonable Time to Achieve Compliance**

36. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that Respondent must immediately comply with all monitoring and recordkeeping requirements of the 2021 NPDES Permit, and that twelve (12) months is a reasonable time for Respondent to repair, replace or construct all wastewater treatment improvements and to achieve compliance with the effluent requirements of that permit.

### **Order for Compliance on Consent**

37. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS Respondent, and Respondent hereby AGREES, to take the actions described below.

38. In accordance with this Order, Respondent shall immediately comply with all influent and effluent sampling, analysis, monitoring and reporting, testing, recordkeeping, and operation

and maintenance requirements of the 2021 NPDES Permit, and shall take all necessary actions to correct the deficiencies and eliminate and prevent recurrence of violations.

39. *Compliance Plan.* By no later than sixty (60) days after the effective date of this Order, Respondent shall submit to the EPA, with a copy to the NDEE, a comprehensive written plan (the “Compliance Plan”) for achieving compliance with the 2021 NPDES Permit.

- a. The Compliance Plan shall describe in detail the actions to be taken or work to be completed, and how such actions or work will enable Respondent to achieve compliance with its NPDES Permit. The Compliance Plan shall identify the author, licensed engineer, or other consultant who has created the Compliance Plan to achieve compliance.
- b. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than twelve (12) months from the effective date of the order.
- c. If the EPA notifies Respondent, by mail or email, that further revisions are needed, Respondent shall make such revisions and resubmit the proposed changes to the EPA within thirty (30) calendar days of receipt of the EPA’s notice.
- d. If Respondent believes they need additional time to complete, prepare, or revise the Compliance Plan, they shall submit a request by mail or email in accordance with Paragraph 45 below, indicating the basis for the request and the period of additional time requested. Any decision by the EPA to grant such request shall be in writing and delivered to Respondent by mail or email.

40. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective measures, Respondent shall submit a written certification to the EPA, with a copy to the NDEE, that they have completed all actions required pursuant to this Order on Consent and achieved compliance with the 2021 NPDES Permit.

41. The EPA will promptly review submittals from Respondent. If, after review of Respondent’s submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 52 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

### **Quarterly Reporting**

42. Beginning no later than August 1, 2022, and on each successive quarter until this Order is terminated pursuant to Paragraph 53, Respondent shall provide to the EPA, with a copy to the NDEE, a report containing, at a minimum, the following information for the previous three (3) months. Quarterly reports shall be provided to EPA on the following schedule, January 15, April 15, July 15, and October 15:

- a) A copy of all monthly monitoring reports regarding compliance with effluent limitations and conditions and supporting documentation;
- b) A detailed description of all actions taken to inspect, repair, clean, maintain and/or improve the collection system and treatment plant pursuant to the Compliance Plan; and
- c) A description of all work planned for the next reporting period pursuant to the Compliance Plan.

### **Reports/Submissions**

43. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement, shall be submitted by electronic mail to *hanlon.lisa@epa.gov*.

44. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically.

45. Any report, notification, certification, or other communication that is not submitted electronically to the EPA shall be submitted in hard copy to:

Lisa Hanlon, or her successor  
U.S. Environmental Protection Agency Region 7  
Enforcement and Compliance Assurance Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219

### **Certification**

46. 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**

47. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

48. 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. The 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 the 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**

49. Nothing in this Order shall limit the 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**

50. 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 remainder of this Order shall not be affected by such a holding and shall apply with full force and effect to Respondent.

### **Effective Date**

51. 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 the EPA. Respondent agrees to electronic service of this Order.

### **Modification**

52. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

### **Termination**

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

**For the Complainant, U.S. Environmental Protection Agency:**

Issued this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

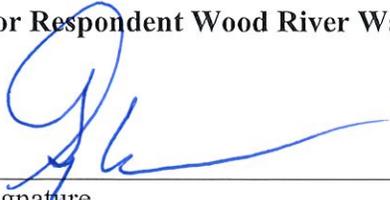
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Wendy Lubbe  
Acting Director  
Enforcement and Compliance Assurance Division

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Chris Muehlberger  
Office of Regional Counsel

**For Respondent Wood River Wastewater Treatment Facility:**

  
\_\_\_\_\_  
Signature

May 5, 2022  
\_\_\_\_\_  
Date

Greg Cramer  
\_\_\_\_\_  
Name

Mayor  
\_\_\_\_\_  
Title

**Certificate of Service**

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency  
*R7\_Hearing\_Clerk\_Filings@epa.gov*

Representative(s) for Respondent:

Brent Gascho  
Utilities Superintendent, Wood River, Nebraska  
*utilitieschw@woodriverne.com*

Greg Cramer  
Mayor, Wood River, Nebraska  
*clerkcwr@woodriverne.com*

Representatives for Complainant:

Chris Muehlberger  
Office of Regional Counsel  
U.S. Environmental Protection Agency Region 7  
*muehlberger.christopher@epa.gov*

Lisa Hanlon  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 7  
*hanlon.lisa@epa.gov*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature