

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
)  
Village of Rosalie, Nebraska )  
Wastewater Treatment Facility )  
)  
)  
Respondent )  
)  
)  
Proceedings under Section 309(a)(3) )  
of the Clean Water Act, 33 U.S.C. )  
§ 1319(a)(3) )  
\_\_\_\_\_ )

Docket No. CWA-07-2011-0020

AMENDED FINDINGS OF VIOLATION  
and ORDER FOR COMPLIANCE

**I. Statutory Authority**

The following AMENDED FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), by Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), and Section 308, 33 U.S.C. § 1318, which authority has been delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division.

1. 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 only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

2. EPA is the federal agency with the authority to administer the federal NPDES program in Indian Country pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

**II. General Factual Allegations**

3. The Village of Rosalie, Nebraska (hereinafter “Respondent”), a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), owns and operates a Wastewater Treatment Facility (“WWTF”) for the Village of Rosalie, Nebraska (the “Village”).

4. The Village's WWTF is a "point source" that discharges "pollutants" to Big Slough Creek, which is a "navigable water," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*

5. NPDES Permit No. NE-0046302 was issued to Respondent by EPA on October 1, 2005, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit expired on November 15, 2010.

6. On July 19, 2010, EPA personnel conducted an inspection of Respondent's WWTF to determine Respondent's compliance with its NPDES permit and the CWA.

### **III. Findings of Violation**

7. Part II, subsection D(1) of Respondent's NPDES permit, "Change in Discharge," states that the Respondent shall give notice to EPA prior to any planned physical alterations or additions to the permitted facility.

8. According to documents obtained by the EPA inspection referenced in Paragraph 6, the Village completed a new treatment system at its WWTF in August 2009. EPA was not notified of the new treatment facility until after it had been installed and was receiving wastewater from the Village's sewage collection system. Respondent's failure to notify EPA of alterations of its WWTF is a violation of its NPDES permit and, therefore, a violation of Section 402 of the CWA.

9. Part II, subsection D(4) of Respondent's NPDES permit "Reporting of Monitoring Results," states that the Respondent must submit quarterly Discharge Monitoring Reports ("DMR") on or before the 28<sup>th</sup> day of January, April, July, and October.

10. According to the inspection referenced in Paragraph 6 above, DMRs have not been completed and/or submitted to EPA since January 2008. Respondent's failure to submit DMRs to EPA is a violation of its NPDES permit and, therefore, a violation of Section 402 of the CWA.

11. Part I, subsection D(2)(b) of Respondent's NPDES permit states that the Respondent shall develop and submit to EPA, for review, a sludge management plan ("SMP") at least 180 days prior to any planned removal of sludge. The SMP must include information in accordance with 40 C.F.R. § 503.33.

12. According to the inspection referenced in Paragraph 6 above, the Village's SMP was submitted approximately 30 days prior to removal of sludge from the old treatment system. Also, the SMP failed to include all required information pursuant to 40 C.F.R. § 503.33. Respondent's failure to timely submit its SMP and failure to include all information required by 40 C.F.R. § 503.33 are violations of its NPDES permit and, therefore, violations of Section 402 of the CWA.

13. Part I, subsection D(2)(f) of Respondent's NPDES permit states that the Respondent shall submit an Annual Sludge Summary Report to EPA by February 19<sup>th</sup> of each year.

14. According to the inspection referenced in Paragraph 6 above, the Village did not submit an Annual Sludge Summary Report to EPA for the 2009 reporting year. Respondent's failure to submit an Annual Sludge Summary Report to EPA is a violation of its NPDES permit and, therefore, a violation of Section 402 of the CWA.

15. Part I, subsection D(1) of Respondent's NPDES permit states that the Respondent shall perform quarterly measurement of the freeboard space and wastewater depth in each lagoon cell.

16. According to the inspection referenced in Paragraph 6 above, Respondent does not conduct or record quarterly measurements of the lagoon freeboard and water depth. Respondent's failure to conduct and record quarterly measurements of its lagoon freeboard and water depth is a violation of its NPDES permit and, therefore, a violation of Section 402 of the CWA.

17. Part II, subsection A(4) of Respondent's NPDES permit "Duty to Reapply," states that Respondent must apply for a renewal NPDES permit at least 180 days before the expiration date of its current permit.

18. Respondent's NPDES permit expired on November 15, 2010. Respondent applied for renewal of its permit on November 15, 2010. The application for renewal of a permit was not applied for at least 180 days before the expiration of Respondent's permit. As such, Respondent is currently operating without a NPDES permit. Respondent's failure to timely apply for a renewal NPDES permit is a violation of its NPDES permit and, therefore, a violation of Section 402 of the CWA.

19. Part II, subsection B(1) of Respondent's NPDES permit "Proper Operation and Maintenance," states that Respondent shall at all times properly operate and maintain all WWTF facilities and systems of treatment and control to achieve compliance with its permit.

20. According to the inspection referenced in Paragraph 6 above, Respondent has failed to properly stabilize the inner dikes on each lagoon cell, leading to excessive erosion in and around the lagoon cells. Also, statements made by Rosalie WWTF personnel on March 23, 2011 indicate that excessive inflow and infiltration ("I & I") into the Village's sewer lines has led, and continues to lead, to excessive flow into the WWTF lagoons. Such excessive inflow compromises the integrity of the lagoons and creates the likelihood for unauthorized discharges. Respondent's failure to properly operate and maintain its WWTF is a violation of its NPDES permit and, therefore, a violation of Section 402 of the CWA.

#### **IV. Order for Compliance**

21. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. 1319(a)(3), and Section 308, 33 U.S.C. § 1318, Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

22. Immediately upon receipt of this Order, Respondent shall comply with its NPDES permit and the CWA.

23. Within thirty (30) days of receipt of this Order, Respondent shall submit a written report to EPA describing the specific actions taken to correct the violations cited herein, and an explanation of why such actions are anticipated to be sufficient to prevent future recurrence of the cited violations. The report shall include the Village's plans to comply with the monitoring and reporting requirements outlined in its NPDES permit and its plans to fix the eroded berms around the WWTF lagoons. Also, the report shall include a long-term plan to eliminate the I & I causing the increase in flow to the WWTF's lagoons. The I & I plan shall include, at a minimum: a summary of results from the Village's recent CCTV assessment of the sewer lines; a plan to eliminate the groundwater infiltration of certain manholes; any other plans necessary to eliminate I & I; completion dates for the proposed work, and; estimated costs for implementation of the plan.

24. All reports and notifications herein required shall be submitted to:

Kimberly Willis  
Compliance Officer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

25. *Certification.* Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

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.

## **V. General Provisions**

### **Effect of Compliance with the Terms of This Order**

26. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

27. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable federal laws, regulations, standards, and requirements including any such laws, regulation, standards, or requirements that may become effective during the term of this Order.

28. 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 Section 309 of the CWA, 33 U.S.C. § 1319, 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**

29. Nothing in this Order shall limit EPA's right to obtain access to, and/or 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**

30. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial 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.

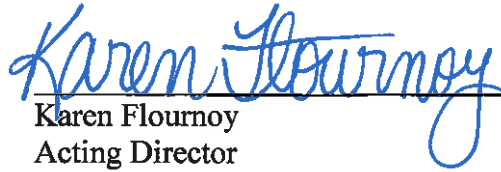
### **Effective Date**

31. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

### **Termination**

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

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



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Karen Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division



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Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Amended Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Kathy Morgan, City Clerk  
The Village of Rosalie, Nebraska  
213 South Foley Avenue  
Rosalie, Nebraska 68055.

4.21.11  
Date

Carl Munkley