

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
City of Gibbon, Nebraska	)	Docket No. CWA-07-2024-0057
	)	NPDES Permit No. NE002927
	)	
Respondent	)	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 Allegations 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 with the concurrence of the Regional Counsel.

2. Respondent is the city of Gibbon, Nebraska (“Respondent” or the “City”) and was at all relevant times a municipality organized under the laws of the state of Nebraska.

3. 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 Respondent’s alleged noncompliance with the CWA and violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its 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) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Allegations 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, 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, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Section 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 Publicly Owned Treatment Works (“POTW”) includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

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.

### **EPA’s General Allegations**

10. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Respondent is the owner and/or operator of a POTW in Gibbon, Nebraska, that includes a wastewater treatment facility (“WWTF”) and a sewage collection system, which receives domestic and industrial wastewater.

12. The WWTF discharges to the Wood River, a perennial, continuously flowing river which flows into the Platte River, a traditionally navigable water.

13. The Wood River is a relatively permanent water connected to the Platte River, a traditionally navigable water, and thus both are navigable waters of the United States as defined by Section 502(7) of the CWA, 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. At all times relevant to this Order, the City's NPDES Permit No. NE0029297 authorized discharges from the WWTF in accordance with the effluent limitations and other terms and conditions of the Permit ("NPDES Permit").

16. On August 14, 2012, the state of Nebraska, through the NDEE, entered into an administrative compliance order with Respondent to correct violations of NPDES Permit effluent limitations, and improper operation and maintenance of its POTW.

17. On August 25, 2015, Respondent was still unable to remain in compliance and was in violation of the administrative order, so the state of Nebraska, through the Nebraska Attorney General's office, filed a judicial complaint for continued violations of the NPDES Permit issued to it during that time.

18. On August 31, 2015, the state of Nebraska, through the Nebraska Attorney General's Office, and Respondent entered into a consent decree to ensure compliance with the NPDES Permit issued to during that time. This consent decree ordered Respondent to make improvements to its POTW to help ensure compliance with its NPDES permit.

19. On January 29, 2024, the Nebraska Attorney General's Office filed a "satisfaction of judgment" related to the 2015 consent decree.

20. Respondent has been unable to achieve consistent compliance with its NPDES Permits since entering into the 2015 consent decree, as outlined in the findings below.

#### **EPA's Findings of Fact and Allegations of Violation**

21. The facts stated in the paragraphs above are re-alleged and incorporated herein by reference.

#### **Failure to Comply with WWTF Operator Requirements**

22. Part VI, Section E of Respondent's NPDES Permit requires operators of the POTW facility to be certified in accordance with NDEE Title 197.

23. At times relevant to this Order, Respondent has failed to employ a certified operator, in violation of Part VI, Section E of the NPDES Permit. Each failure to comply with this requirement is a violation of the limitations and conditions of Respondent's NPDES permit.

#### **Failure to Submit Discharge Monitoring Reports**

24. Appendix A, Part 14(d) of Respondent's NPDES Permit requires Respondent to submit quarterly discharge monitoring reports to NDEE.

25. Between July 1, 2019, and March 31, 2024, Respondent submitted late discharge monitoring reports, and failed to submit discharge monitoring reports, in violation of Appendix

A Part 14(d) of the NPDES Permit. Each failure to comply with this requirement is a violation of the limitations and conditions of Respondent's NPDES permit.

### **Failure to Provide Reports of Noncompliance**

26. Appendix A, Part 14(g) of Respondent's NPDES Permit requires Respondent to provide oral notification within 24 hours of and submit a written report within five (5) days of the time it became aware of any noncompliance which may endanger health or the environment.

27. Between October of 2022 and March 2024, Respondent failed to report occurrences of effluent limit exceedances, which is reflected in its discharge monitoring reports, that would prompt a Report of Noncompliance, in violation of Appendix A, Part 14(g). Each failure to comply with this requirement is a violation of the limitations and conditions of Respondent's NPDES permit.

### **Failure to Properly Operate and Maintain the WWTF**

28. Appendix A, Part 7 of Respondent's NPDES Permit requires Respondent to properly operate and maintain all facilities and systems of treatment and control at all times to achieve compliance with the conditions of the permit.

29. Respondent has been in significant noncompliance with its NPDES Permit in at least nine (9) of the past twelve (12) quarters due to continual mechanical failures and improper operation at the WWTF, in violation of Appendix A, Part 7.

30. On May 3, 2024, mechanical failures at the WWTF caused backups in the sanitary sewer collection system and into residents' homes, in violation of Appendix A, Part 7. Each failure to comply with this requirement is a violation of the limitations and conditions of Respondent's NPDES permit.

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

31. Part I of Respondent's NPDES permit established final effluent discharge limits for ammonia, carbonaceous biochemical oxygen demand ("CBOD") and total suspended solids ("TSS").

32. Based on the Respondent's reported monitoring data, between July 1, 2019, and March 31, 2024, the POTW discharged effluent to waters of the United States that exceeded the limits of its NPDES permit for ammonia approximately one-hundred and sixty (160) times, CBOD approximately twelve (12) times, and TSS approximately fifty-eight (58) times, in violation of Part I of Respondent's NPDES Permit.

33. Each failure to comply with effluent limitations is a violation of the limitations and conditions of Respondent's NPDES permit and Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).



**Order for Compliance on Consent**

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

35. Respondent shall take actions to comply with all requirements of its NPDES Permit.

36. *Wastewater Treatment Operators.* Respondent shall retain a certified assistant operator, and all operators shall be operating in compliance with Part VI, Section E of the NPDES Permit within 120 calendar days of the Effective Date of this Order.

37. *Operating and Maintenance Manual.* Within 120 calendar days of the Effective Date of this Order, Respondent shall develop and submit to EPA an Operating and Maintenance (O&M) Manual for the wastewater treatment facility. The O&M Manual shall describe in detail the standard operating procedures and scheduled routine maintenance for all activity at the wastewater treatment facility.

38. *Compliance Plan and Schedule.* Within 120 calendar days of the Effective Date of this Order, Respondent shall develop and submit to EPA a Compliance Plan that describes the procedures and implementation timetable for the POTW to achieve compliance with the requirements of the NPDES permit and the CWA as soon as possible but no later than two years from the Effective Date of this Order. The Compliance Plan shall:

- a. 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.
- b. Include a schedule identifying key dates in the Compliance Plan with a final completion date no later than two years from the Effective Date of this Order.
- c. Identify the author, licensed engineer, or other consultant who has created the plan to achieve compliance.
- d. Identify the commissioners, board, or other party who has approved the plan and will implement the required facility changes.

39. Respondent shall implement the Compliance Plan in accordance with the proposed schedule.

40. If Respondent believes it needs additional time to complete, prepare, revise, or implement the Compliance Plan, it shall submit a request by mail or email to the EPA contact at the address identified 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.

41. *Reporting to the EPA and NDEE.* Within 60 days of the Effective Date of the Order, and on the first working day of each calendar quarter (January, March, June, September) thereafter until termination of this order, Respondent shall submit completed work orders, signed receipts, and a summary narrative documenting work completed during the prior three months.

42. 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 the Modification section below or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

43. *Completion Report.* Within 30 days of completion of the corrective actions detailed in the Compliance Plan, the City shall submit a written certification stating that the City has completed all required corrective actions.

### **Reports/Submissions**

44. *Submittals.* All documents required to be submitted to EPA by this Order shall be submitted by electronic mail or via the secure file transfer service utilized by the EPA. If the secure file transfer server option is needed or preferred for larger or multiple documents, a link will be provided upon request.

ward.suzanne@epa.gov

Suzanne Ward, or successor  
U.S. Environmental Protection Agency – Region 7  
Enforcement and Compliance Assurance Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

45. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

46. All documents required to be submitted pursuant to this Order shall also be submitted by electronic mail to NDEE to the address provided below:

mike.mcbride@nebraska.gov

Mike McBride, or successor  
Onsite Wastewater Section  
Nebraska Department of Environment and Energy



## **General Provisions**

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

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 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**

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.

### **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:**

**JODI  
BRUNO**

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BRUNO  
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Jodi Bruno  
Acting Director  
Enforcement and Compliance Assurance Division

**Pappas,  
Samantha**

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Samantha Pappas  
Attorney  
Office of Regional Counsel



**For the Respondent, City of Gibbon, Nebraska:**

Deborah Vanmatre  
Signature

6/20/24  
Date

Deborah Vanmatre  
Name

Mayor  
Title

**CERTIFICATE OF SERVICE**

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

Regional Hearing Clerk:

U.S. Environmental Protection Agency Region 7  
*R7\_Hearing\_Clerk\_Filings@epa.gov*

Copy by First Class Mail to Respondent:

The Honorable Deb VanMatre  
Mayor of Gibbon  
715 Front Street  
P.O. Box 13  
Gibbon, Nebraska 68840

Copy emailed to representatives for Complainant:

Samantha Pappas  
EPA Region 7 Office of Regional Counsel  
*pappas.samantha@epa.gov*

Suzanne Ward  
EPA Region 7 Enforcement and Compliance Assurance Division  
*ward.suzanne@epa.gov*

Copy emailed to NDEE:

Mike McBride, or successor  
Onsite Wastewater Section  
Nebraska Department of Environment and Energy  
*mike.mcbride@nebraska.gov*

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