

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:)

City of Ruidoso Downs and Village of)
Ruidoso WWTP)

NPDES Permit No. NM 0029165)

NPDES Appeal No. 17-03

**NOTICE OF APPEARANCE BY THE
VILLAGE OF RUIDOSO AND THE
CITY OF RUIDOSO DOWNS AND
RESPONSE TO PETITION FOR
REVIEW**

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Exhibit 1 – 2007 NPDES Permit No. NM0029165 (excerpt)

Exhibit 2 – 2012 NPDES Permit No. NM0029165 (excerpt)

Exhibit 3 – 2017 NPDES Permit No. NM0029165 (excerpt)

Exhibit 4 – Total Maximum Daily Load for the Rio Ruidoso, December 13, 2016 (excerpt)

NOTICE OF APPEARANCE BY THE VILLAGE OF RUIDOSO AND THE CITY OF RUIDOSO DOWNS AND RESPONSE TO PETITION FOR REVIEW

Montgomery & Andrews, P.A. hereby enters its appearance in this proceeding on behalf of the Village of Ruidoso and the City of Ruidoso Downs (collectively “Ruidoso”). Ruidoso owns and operates the wastewater treatment plant (“WWTP”) that is subject to the National Pollution Discharge Elimination System (“NPDES”) Permit No. NM 0029165, effective on September 1, 2017 (“Current Permit”), and is the permittee in this proceeding.

FACTUAL BACKGROUND

1. The Current Permit Does Not Relax Prior Interim Effluent Limits for Total Nitrogen (“TN”).

Petitioner Rio Hondo Land & Cattle Company (“Petitioner”) states more than ten times that the TN effluent limit in the Current Permit is a “relaxation” of prior effluent limits. Other times, Petitioner states that the TN effluent limit in the Current Permit will allow Ruidoso to “increase” discharges of TN to the Rio Ruidoso. The impression left by these statements is that the Current Permit allows Ruidoso to discharge more TN to the stream than allowed by prior permits.

However, a close look at the 2007, 2012 and 2017 NPDES permits shows exactly the opposite to be true. Portions of each of these permits showing TN limits are attached as Exhibits 1, 2 and 3 respectively. The effective, enforceable TN effluent limits in these permits have become increasingly more stringent. The 2007 and 2012 permits distinguish between “interim” and “final” TN limits. One must focus on the “interim limits” in the 2007 and 2012 permits, because the “final TN limit” of 1.0 milligram per liter (“mg/l) was effective for only one month out of the 120 months of the two permit terms. The “final limit” of 1.0 mg/l never became effective as a condition of the 2007 permit and only became effective as a condition of the 2012 permit for one month, from July 31, 2017 to August 31, 2017.

Ruidoso offers the table below to illustrate the increasing stringency of the TN effluent limits. Unlike the table offered by Petitioners on page 11 of *Memorandum Brief in Support of Petition for Review* (“*Memorandum Brief*”), this table presents the actual TN limits that Ruidoso was and is required to meet.

TOTAL NITROGEN		
DATES	MASS LOAD LIMITS	CONCENTRATION LIMITS
September 1, 2007 to July 31, 2012 ¹	195.2 pounds (“lbs”)/day for influent temperatures less than 13° Centigrade (“C”)	Less than 9 mg/l for influent temperatures less than 13° C
	130.1 lbs/day for influent temperatures greater than or equal to 13° C	Less than 6 mg/l for influent temperatures greater than or equal to 13° C
August 1, 2012 to July 30, 2017	135.2 lbs/day for influent temperatures less than 13° C	6 mg/l for influent temperatures less than 13° C
	90.1 lbs/day for influent temperatures greater than or equal to 13° C	4 mg/l for influent temperatures greater than or equal to 13° C
July 31, 2017 to August 31, 2017	18.9 lbs/day	1 mg/l
September 1, 2017 to Present	37.8 lbs/day	No concentration in Permit. Concentration equivalent to 37.8 lbs/day is 2.37 mg/l

As seen in the above table, the Current Permit contains a significantly more stringent TN mass-based effluent limit than was effective during all but one month of the terms of the prior two permits. The equivalent concentration-based effluent limits (although not part of the Current Permit) have become correspondingly more stringent.

¹ Although these are the effective dates of the 2007 Permit, the TN limits did not become effective until construction of the current WWTP was completed in 2011.

Consequently, the Current Permit is not allowing the WWTP to discharge increased levels of TN into the Rio Ruidoso. Rather, the two prior permits and the Current Permit demonstrate a trend whereby EPA is applying increasing pressure for Ruidoso to reduce TN levels in WWTP effluent.

2. The Challenges Faced by Ruidoso in Complying with the Current Permit Provide No Incentive to Increase the Discharge of TN to the Stream.

Petitioner has argued that Ruidoso's concerns about being able to comply with the Current Permit demonstrate a flaw in the Current Permit. Ruidoso acknowledges that, as owner and operator of the WWTP, it is concerned about the capability of the WWTP to meet the requirements of the Current Permit. These concerns are well founded. The New Mexico Environmental Department's ("NMED") November 3, 2017 Total Maximum Daily Load ("TMDL"), approved by EPA on December 13, 2016, states that the limit of technology is generally considered to be 3.0 mg/l for TN. *See* Exhibit 4 at p. 22. NMED also states that TN concentrations in treated effluent typically range from 3.0 mg/l to 10.0 mg/l. *Id.*

Petitioner's argument appears to rest on two assumptions. First, Petitioner states that the Current Permit itself contains "relaxed" TN limits. *Memorandum Brief*, pp.12 and 21. However, as demonstrated above, the effective TN limits in the Current Permit are more stringent than those in the 2012 permit, which in turn were more stringent than those in the 2007 permit. Consequently, Ruidoso does not believe that the first assumption is valid.

Second, Petitioner assumes that Ruidoso will not be capable of meeting the TN effluent limits in the Current Permit. *Memorandum Brief*, pp. 12 and 21. Ruidoso acknowledges the difficulty of meeting these limits. However, Ruidoso will do everything reasonably possible to reduce TN levels in WWTP effluent and meet the TN effluent limits in the Current Permit. Ruidoso has every incentive to do so, both to continue improving water quality in the stream and

to avoid enforcement action. Ruidoso has not “relaxed” its efforts to reduce TN levels in the past and will not so do in the future.

ARGUMENT

Ruidoso does not oppose the Current Permit as issued and concurs with the legal arguments made by EPA in its Response to Petition for Review.

CONCLUSION

For the reasons stated, Ruidoso respectfully submits that the Environmental Appeals Board should deny the Petition for Review.

Dated: January 18, 2018

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

/s/ Edmund H. Kendrick
Edmund H. Kendrick
MONTGOMERY & ANDREWS, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 986-2527
ekendrick@montand.com

*Attorneys for Village of Ruidoso and City of
Ruidoso Downs*

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing *Notice of Appearance by the Village of Ruidoso and the City of Ruidoso Downs and Response to Petition for Review* in the matter of NPDES Appeal No. 17-03 were served via electronic mail and United States First Class Mail, postage prepaid, on the following persons on this 18th day of January 2018:

David Gillespie
Asst. Regional Counsel
U.S. EPA Region 6 – Office of Regional Counsel
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Gillespie.david@epa.gov

Steven Sugarman
Attorney for Rio Hondo Land & Cattle Company
347 County Road 55A
Cerrillos, New Mexico 87010
stevensugarman@hotmail.com

/s/ Edmund H. Kendrick
Edmund H. Kendrick
MONTGOMERY & ANDREWS, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 986-2527
ekendrick@montand.com