

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. CWA-07-2023-0079
The Village of Pender, Nebraska,)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE ON
)	CONSENT
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

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 Pender, Nebraska (“Village” or “Respondent”), which owns and operates a Publicly Owned Treatment Works (“POTW”), including a Wastewater Treatment Facility (“WWTF”).

3. The EPA and Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the objective 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 violations of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order, 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 personal service by electronic mail, (2) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Order, (3) agrees to undertake all actions required by the terms and conditions of this Order, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual or legal allegations in this Order, except that Respondent admits the jurisdictional allegations herein. Respondent 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 as 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 Treatment Plant.

9. As defined by 40 C.F.R. § 403.3(r), a POTW Treatment Plant is “that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.”

10. Because Respondent’s POTW is 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.

Allegations of Fact and Conclusions of Law

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

12. Respondent is, and was at all times relevant to this action, the owner and/or operator of the Village of Pender Wastewater Treatment Facility (“WWTF” or “facility”), located on Logan Creek Road in Thurston County, Nebraska, at latitude 42°06’22.3” N and longitude 96°41’37.8” W.

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

14. The WWTF is a POTW Treatment Plant within the meaning of 40 C.F.R. § 403.3(r), and the WWTF and sewers, pipes and other conveyances that carry the wastewater to the WWTF together constitute a POTW.

15. The WWTF discharges to Logan Creek Dredge.

16. Logan Creek Dredge is a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. Logan Creek Dredge is impaired by *E. coli* within the meaning of section 303(d) of the CWA, 33 U.S.C. § 1313(d).

18. The WWTF is a point source that discharges pollutants, as these terms are defined by Sections 502(14) and (12) of the CWA, respectively, 33 U.S.C. §§ 1362(14) and (12), and 40 C.F.R. § 122.2.

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

20. The EPA issued NPDES Permit No. NE-0040908 (the “Permit”) to Respondent. The Permit is effective from February 1, 2019, to January 31, 2024, and authorizes discharges from the WWTF to Logan Creek Dredge subject to conditions and limitations set forth in the Permit.

21. On February 2, 2023, EPA requested information from the Village about the WWTF and planned improvements to it and to the POTW as a whole pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

22. The Village’s response to the request included a report prepared by JEO Consulting Group and dated April 24, 2020 (“the JEO Report”), detailing operational and maintenance deficiencies at the WWTF and the sewer and wastewater lines that fed it proposing improvements to the POTW. The Village further explained that in February of 2023, the Village approved an engineering contractor to design the treatment and collection system improvements referenced in the JEO Report.

23. Respondent has retained a qualified engineering firm to assist the Village in identifying and addressing needed infrastructure, operational, and management changes at the POTW. On March 30, 2023, the consulting firm held a project kickoff meeting to establish a timeline for these improvements.

Findings of Violation

Count 1: Failure to Comply with Effluent Limitations

24. The Permit established the following discharge limits:

Parameter	Discharge Limit
Effluent Flow	Monitor and Report Million Gallons per Day (MGD)
pH	6.5-9.0 Standard Units
Temperature	Monitor and Report - °F
Dissolved oxygen	Minimum – 5.0 mg/L
5-Day Biochemical Oxygen Demand (BOD5)	Monthly Average – 30 mg/L Weekly Average – 45 mg/L
Total Suspended Solids (TSS)	Monthly Average – 30 mg/L Weekly Average – 45 mg/L
<i>E. coli</i> (May 1-September 30)	Monthly Geometric Mean - 126 cfu/100 mL

	Single Sample Maximum - 298 cfu/100 mL
<i>E. coli</i> (October 1 – March 31)	Monitor and Report - cfu/100 mL
Nitrogen, Total as N	Monitor and Report – mg/L
Phosphorus, Total as P	Monitor and Report – mg/L
BOD5 Percent Removal	Monthly Average Minimum of 85% Removal
TSS Percent Removal	Monthly Average Minimum of 85% Removal

25. Respondents' POTW effluent violated the BOD5, BOD percent removal, *E. coli*, TSS, and TSS percent removal limits of the Permit on multiple occasions from October 2019 to September 2022 as identified in Attachment A.

26. Each failure to comply with effluent limitations is a violation of the conditions or limitations of the Permit and, as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Properly Operate and Maintain the POTW

27. Part D.1 of the Permit requires Respondent to “maintain the [f]acility and related appurtenances in proper operating condition” and that the facility “be operated in a manner to meet the permit requirements.”

28. In response to EPA’s Section 308 Request for Information, Respondent provided a report, prepared by JEO Consulting Group and dated April 24, 2020, detailing how the facilities and appurtenances had not been properly maintained or otherwise needed repairs or improvements to meet the Permit requirements.

29. Respondent’s failure to properly operate and maintain the POTW is a violation of the conditions and limitation of the NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Order for Compliance

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

31. The Village shall immediately take appropriate actions necessary to correct the deficiencies, to eliminate and prevent recurrence of the violations cited above, and to come into compliance with the terms and conditions of its NPDES permit.

32. Within 60 days of the Effective Date of this Order, the Village shall submit to the EPA a written report describing the actions it has taken since March 30, 2023, 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 to the POTW structure, including, but not limited to, the WWTF; and

b. A statement from the Village's consultant describing the progress in identifying and addressing needed infrastructure, operational, and management changes for the POTW.

33. *Compliance Plan.* Within 60 days of the Effective Date of this Order, Respondent shall submit to the EPA a comprehensive written plan (the "Compliance Plan") for achieving compliance with the NPDES permit no later than May 31, 2025.

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 the effluent limitations prescribed by the NPDES Permit. The Compliance Plan shall identify the author, licensed engineer, or other consultant who has created the plan to achieve compliance. The Compliance Plan shall identify the commissioners, board, or other party who has approved the plan and will implement the required facility changes.

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 May 31, 2025.

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 additional time is needed to complete, prepare, or revise the Compliance Plan, Respondent shall submit a request by mail or email to Don Hamera at the address identified in Paragraph 39 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.

34. *Progress Reports.* After submission of the 60-day Report required in Paragraph 32 and until submission of the Completion Report, Respondent shall submit progress reports to the EPA describing its continuing work to comply with the terms and conditions of the Permit since the previous submittal to the EPA. The reports shall be submitted on each August 1 and February 1 until work is complete. Each progress report shall include the information listed in Paragraph 32 and any additional information regarding actions the Village has taken to achieve and maintain compliance with the Permit.

35. *Completion Date.* Respondent shall complete all work necessary to comply with the Permit by May 31, 2025.

36. *Completion Report.* Once the Village's consultant determines that all work necessary to comply with the Permit has been completed, Respondent shall submit a completion report to the EPA, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete (hereinafter the "Completion Report"). The Completion Report must be submitted within thirty (30) days after work has been completed.

Submittals

37. All submittals to EPA that are required of Respondent by this Order shall, where possible, be made by electronic submission to *hamera.don@epa.gov*.

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

39. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy to:

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

40. All submissions to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described in 40 CFR 122.22:

I certify that the Village of Pender has complied with all the applicable requirements of the Order for Compliance. I also 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

41. 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.

42. 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.

43. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

Access and Requests for Information

44. Nothing in this Order shall limit the EPA's right to obtain access to and/or to inspect the 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

45. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

46. This Order shall be effective upon signature by the EPA. Any amendments shall become effective and enforceable on the date that the amendment is signed by all parties. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from the effective date.

Modification

47. The EPA may subsequently amend this Order, upon written agreement with Respondent, in accordance with the EPA's authority under the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order. All deadlines for performance under this Order may be extended upon written approval by EPA, at its sole discretion, without formal amendment to the Order.

Termination

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

Signatories

49. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this Order. This Order may be signed in part and counterpart by each party.

Electronic Service

50. Respondent consents to receiving the filed Order electronically at the following email address: *reha.chris@gmail.com*.

For Respondent, the Village of Pender:

Signature: 

Date: 4-21-23

Name: Christopher Reha

Title: Board Chair

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

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

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 Region 7
R7_Hearing_Clerk_Filings@epa.gov

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Don Hamera
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
hamera.don@epa.gov

For Respondent:

Chris Reha
Chairman, Village of Pender
416 Main Street
Pender, NE 68047
reha.chris@gmail.com

Chris Brader
Utilities Superintendent, Village of Pender
117 North 3rd Street
Pender, NE 68047
villageofpender@abnebraska.com

Date

Signature