



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION

Reply To: 20-C04

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. James Daniels
Owner
Highliner Lodge & Charters, Inc.
1014 Salmon Way
Pelican, Alaska 99832

Re: Response to Comment on Proposed Administrative Consent Agreement and Final Order
In re: City of Pelican, Alaska, EPA Docket No. CWA-10-2022-0031

Dear Mr. Daniels:

We are writing in response to your comments provided to the Regional Hearing Clerk for the U.S. Environmental Protection Agency (EPA), Region 10, by email on February 4, 2022, on the above-referenced administrative Consent Agreement and Proposed Final Order (CA/FO) entered into between EPA and the City of Pelican, Alaska ("City"). The public comment period for this CA/FO expired on February 3, 2022. Even though your comments were received after the expiration of the public comment period, EPA has fully considered the comments that you provided.

Your comments (excerpted below) appear to be primarily concerned with potential ongoing harms associated with the City's operation of its wastewater treatment facility.

Many of our toilets in Pelican do not flush, or do not flush adequately... apparently do to back pressure of some kind.

The City of Pelican has knowingly pumped raw sewage into Pelican Creek for over a year in violation of federal law. The City of Pelican has ignored complaints from its residents and has degraded our environment without any concern for those who have had to suffer the stench of their gross mismanagement of the sewer utility. They have failed to pump the solids from their collection tank for years, which most likely led to the blockage of the outfall piping and their hacking into the discharge pipe and redirecting raw sewage into the freshwater of Pelican Creek. This sewage backs up on incoming tides and deposits that swanage onto some of our properties and that of our neighbors.

Although it is unproven, it is likely that the city has also dumped waste oil into the sewage collection tank, resulting in the sewage being refused at a collection site in Juneau. Not to worry though... the city will find some way to fleece taxpayers into paying for their mismanagement.

These violations are deliberate and egregious.

In EPA's consideration of your comments, we first note the distinction between the action on which you have submitted a comment, a CA/FO with the sole purpose of identifying the appropriate civil monetary penalty to resolve the alleged Clean Water Act (CWA) violations, and a previous action between the City and EPA requiring the City to take a series of compliance measures to come into compliance with the CWA. That previous action was memorialized in an Administrative Order on Consent (AOC), Docket Number, CWA-10-2021-0148, effective on July 8, 2021. The AOC is enclosed for your information.

EPA contacted the City to request more information related to your first comment that "[m]any of our toilets in Pelican do not flush, or do not flush adequately... apparently do to back pressure of some kind." EPA specifically requested that the City describe and explain any sanitary sewer conveyance system (SSCS) conditions, events, procedures or situations that would potentially be observed or interpreted as an underlying basis or reason for a comment that the City's entire sewer system is broken. The EPA request noted that any SSCS conditions, events, procedures or situations include, but were not limited to, toilets that do not flush or inadequately flush because of SSCS conditions like back-pressure or other SSCS conditions.

Other than the fume back-up situation described below, the City stated that there are no other SSCS-related operational issues that homes, businesses and other residential or occupied buildings are experiencing currently or that were experienced in the time period from 2019 - 2022.

EPA contacted the City to request more information related to the portion of your comments focused on allegations that "[t]he City of Pelican has knowingly pumped raw sewage into Pelican Creek for over a year in violation of federal law. . . This sewage backs up on incoming tides and deposits that swanage (sic) onto some of our properties and that of our neighbors." EPA specifically requested that the City provide a summary of recent releases of untreated or partially treated sewage from the City's sanitary sewer collection system, including releases to ground, surface waters and sewage back-ups into homes, residential dwellings, buildings and any other structures. These are commonly known as sanitary sewer overflows (SSOs). The City provided two examples of reported SSOs since January 1, 2019, but acknowledged the possibility that if an individual customer service line fails, the City may not always be notified. However, the City committed to EPA that it responds to and investigates every reported SSO. According to the City, an SSO event occurred in May 2021, resulting from snow falling from a roof onto a sewer line, causing the line to break. The City apparently responded to that SSO event and completed necessary actions to address the issue within two business days.

The other SSO event reported by the City involved a manhole within an area known as "Pelican Flats," an area apparently subject to inundation during high tide. The City acknowledged to EPA that it discovered that a manhole cover was temporarily dislodged on a manhole located within "Pelican Flats." According to the City, the manhole cover was temporarily dislodged by a log that had drifted against the manhole and caused the cover to move. The log was apparently anchored on the "Flats" by a local property owner. Once the City discovered the problem, it had to wait until tidal conditions were appropriate to implement a solution. The manhole cover was apparently fastened to prevent further seawater intrusion and more permanent repairs will occur once the City is able to obtain the necessary supplies. In addition to these permanent repairs, the City intends to notify residents that they should not tow logs in close vicinity to the manhole and will turn off relevant pumps during high tide events to ensure that the seawater will not reach the City's sanitary sewer collection system.

EPA contacted the City to request more information related to your comment stating that the City has “failed to pump the solids from their collection tank for years, which most likely led to the blockage of the outfall piping and their hacking into the discharge pipe and redirecting raw sewage into the freshwater of Pelican Creek.” EPA specifically requested that the City provide information over an approximate three year period through January 2022, identifying any bypasses that have occurred from the City’s wastewater treatment facility or SSCS. For purposes of EPA’s request, bypass means the intentional diversion of waste streams (e.g., untreated (i.e., raw) or partially treated sewage), from any portion of the City’s wastewater treatment facility or the SSCS to any location or media including ground and surface waters (e.g., Lisianski Inlet, Pelican Creek, etc.). According to the City, there have been no isolated bypasses from the overflow at the wastewater treatment facility.

Please note that Paragraphs 3.31 – 3.32 of the CA/FO address an alleged violation related to the City’s failure to maintain the wastewater treatment facility outfall regarding a June 2020 outfall clog event. Note also that Section V of the above-referenced AOC requires the City to take a series of compliance measures related to the septic tanks, including but not limited to completing all repairs and replacements on the septic tanks to address any remaining inoperable isolation valves, repairing and replacing any damaged or degraded tank insulation and protective coating and making any other necessary repairs to the tanks, valves and other wastewater treatment facility appurtenances.

Paragraphs 5.1 and 5.2 of the above-referenced AOC also require the City to develop and implement a wastewater treatment facility operations and maintenance manual that includes procedures and schedules for the periodic cleaning (e.g., jetting) of the facility’s outfall piping system to prevent reduced flow capacity, clogging and plugging and tank procedures and methods to trigger tank sludge removal and proper disposal. It is EPA’s position that these various AOC compliance measures will help ensure that the City’s septic tanks return to compliance with the wastewater treatment facility’s National Pollutant Discharge Elimination System (NPDES) permit.

EPA requested that the City respond to wastewater treatment facility and SSCS matters related to your comment that the City “has ignored complaints from its residents and has degraded our environment without any concern for those who have had to suffer the stench of their gross mismanagement of the sewer utility.” According to the City, when it receives a public complaint related to the sanitary sewer collection system, the City’s public works department is tasked with identifying the cause of the problem and, if appropriate, correcting the problem. The City commits to EPA that all public complaints are appropriately investigated. As an example, the City describes a report from a homeowner stating that fumes were backing up into their residence. In response, the City hired a licensed plumbing contractor to evaluate the customer’s service sewer line and the licensed contractor apparently concluded that the drainage system of the residence was not properly vented. According to the City, the customer was notified of the contractor’s findings.

Lastly, EPA requested that the City respond and provide information responding to your comment that “[a]lthough it is unproven, it is likely that the city has also dumped waste oil into the sewage collection tank, resulting in the sewage being refused at a collection site in Juneau.” EPA requested information on whether the City has ever added any waste oil or any other petroleum products or animal oils, fats or greases to the septic tanks at the wastewater treatment facility over an approximate five year period through January 2022. The City commits to EPA that it has not added any waste oil, other petroleum products, animal fats or greases to the tanks at the wastewater treatment facility.

EPA has fully considered your material comments and has determined that they do not require any modification to the CA/FO. As stated above, EPA believes that the AOC requiring the City to implement a number of compliance measures will ensure that the City will return to compliance with the wastewater treatment facility's NPDES permit. Additionally, your comments do not directly suggest that a modification to the agreed-upon civil penalty within the CA/FO is appropriate. As stated in Paragraph 4.3 of the CA/FO and as required by CWA Section, 309(g)(3), 33 U.S.C. § 1319(g)(3), when determining the appropriate civil penalty resolving this matter, EPA has taken into account "the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." EPA has determined that the agreed-upon civil penalty adequately considered the required statutory factors relevant to the alleged CWA violations and will serve to deter any future CWA violations by the City.

EPA's Consolidated Rules of Practice at, 40 C.F.R. Part 22, that govern these proceedings require we provide you a copy of the proposed CA/FO by certified mail. 40 C.F.R. § 22.45(c)(4). Within 30 days of your receipt of the enclosed proposed CA/FO, you may petition the Regional Administrator for EPA Region 10, to have it set aside on the basis that *material evidence* was not considered. The contact information for the Regional Administrator is:

Michelle Pirzadeh, Acting Regional Administrator
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
pirzadeh.michelle@epa.gov

Should you decide to submit a petition, please also send a courtesy copy to our attorney, Patrick Johnson, at the below contact information:

Patrick Johnson, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 10
Alaska Operations Office
222 West 7th Avenue, #19
Anchorage, Alaska 99513-7588
johnson.patrick@epa.gov

Our Consolidated Rules of Practice at, 40 C.F.R. § 22.45(c)(4), also require that you provide a copy of your petition to the City at the below contact information:

Patricia Phillips, Mayor
City of Pelican, Alaska
P.O. Box 737
Pelican, Alaska 99832
MayorPhillips@pelicancity.org

Lattieca Stewart, City Clerk
City of Pelican, Alaska
P.O. Box 737
Pelican, Alaska 99832
cityclerk@pelicancity.org

In accordance with, 40 C.F.R. § 22.45(c)(4), please do not send any such petition to the Regional Hearing Clerk for EPA Region 10.

Thank you again for your comments. Regardless of whether you file a petition, please note that your comments were considered and are included in this matter's administrative record. If you have any questions, you may contact Rick Cool, of my staff, at (206) 553-6223 or at cool.richard@epa.gov. For any legal questions, you may contact Patrick Johnson, in the Office of Regional Counsel, at (907) 271-3914 or johnson.patrick@epa.gov.

Sincerely,

Edward J. Kowalski
Director

Enclosures