

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

IN THE MATTER OF )  
)  
The Village of Pender, Nebraska )  
Wastewater Treatment Facility ) Docket No. CWA-07-2016-0073  
)  
)  
)  
Respondent ) FINDINGS OF VIOLATION  
) AND ORDER FOR COMPLIANCE  
)  
Proceedings under Section 309(a)(3) )  
of the Clean Water Act, 33 U.S.C. )  
§ 1319(a)(3) )  
\_\_\_\_\_ )

**I. Statutory Authority**

The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE is 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), 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 pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

**II. General Factual Allegations**

3. The Village of Pender, 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”), addressed at 416 Main Street, Pender, NE.

4. The Pender WWTF is a “point source” that discharges “pollutants” to Logan Creek Dredge, 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. Respondent’s facility is located in Indian Country, as that term is defined in 18 U.S.C. § 1151. Therefore, EPA is the proper authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. On or about January 23, 2013, NPDES Permit No. NE0040908 was issued to Respondent by EPA. The permit will expire on January 23, 2018.

7. The NPDES permit requires, among other things, that Respondent treat waste water through activated sludge treatment prior to discharging through a designated outfall. The permit also requires the Village of Pender to submit its Quarterly Discharge Monitoring Reports to EPA.

8. The WWTF discharges into the Logan Creek Dredge, a “navigable water,” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

9. On August 24 and 25, 2009, EPA personnel conducted an inspection of Respondent’s WWTF to determine Respondent’s compliance with its NPDES permit and the CWA.

10. On May 10, 2010, EPA issued an Administrative Order for Compliance (“2010 Order”) to Respondent to bring the WWTF into compliance with their NPDES permit and the CWA.

11. EPA received correspondence submitted by Respondent dated June 9, 2010; June 17, 2010; August 30, 2010; October 12, 2010 and March 21, 2011 which addressed the violations cited the 2010 Order.

12. On April 29, 2011, EPA issued a letter to Respondent terminating the 2010 Order.

13. On July 15-17, 2014, EPA personnel conducted an inspection of Respondent’s WWTF to determine Respondent’s compliance with its NPDES permit and the CWA.

14. On June 10, 2015, EPA issued an Information Request pursuant to Section 308 for additional information to determine Respondent’s compliance with the CWA.

15. On July 29, 2015, and April 25, 2016, Respondent submitted information to EPA in response to the Section 308 information request.

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

Based on information obtained by EPA's July 2014 inspection of Respondent's WWTF and responses to EPA's June 10, 2015 Request for Information, EPA alleges the following:

#### **Count 1: Failure to Discharge Through Activated Sludge Treatment System**

16. Section B of Respondent's NPDES permit, "Description of Discharge Point," specifies that authorized discharges from the WWTF are limited to Outfall 001 and requires that authorized discharges are to be from the WWTF's activated sludge treatment system.

17. The EPA inspection and Respondent's responses revealed that Respondent is discharging approximately 14 million gallons of untreated or partially treated wastewater annually from the lagoons to Outfall 001. The wastewater is not treated by the activated sludge treatment system.

#### **Count 2: Failure to have Representative Sampling and Monitoring**

18. Section C. "Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001" Table 1 of Respondent's NPDES permit requires effluent flow be monitored daily, and samples be collected for all parameters according to frequencies specified in the Table. Standard Conditions, Section C "Monitoring and Records" of Respondent's NPDES permit requires "Samples and measures taken for the purpose of monitoring shall be representative of the volume and nature of the monitored activity."

19. The EPA inspection and Respondent's responses revealed that Respondent's discharges from the lagoons to Outfall 001 are not monitored for flow volume or sampled. Therefore, measures taken during months of lagoon draw down activities are not representative of the volume and nature of the monitored activity, as required by the NPDES permit.

#### **Count 3: Failure to Comply with Effluent Limitations**

20. Section C of Respondent's NPDES permit, "Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001," requires Respondent to:

- a) sample *E. coli* at least once per month between May 1 and September 30 and meet the permitted effluent discharge limits;
- b) monitor and report *E. coli* samples at least once per month between October 1 and March 31; and

- c) sample Dissolved Oxygen (D.O.) at least once per month and meet permitted effluent discharge limits.

21. A review of Respondent's Discharge Monitoring Reports, referenced in Paragraph 7 revealed that:

- a) Between January 2013 and January 2016, Respondent failed to meet the permitted effluent limits for *E. coli* during six reporting months;
- b) Between January 2013 and January 2016, Respondent failed to sample and monitor *E. coli*, as required by the NPDES permit, during six reporting months; and
- c) Between January 2013 and January 2016, Respondent failed to meet the permitted effluent limits for DO during twelve reporting months.

**Count 4: Failure to Properly Operate and Maintain the WWTF**

22. Part B.1 of the Supplemental Conditions of the NPDES permit requires the permittee to maintain the wastewater treatment facility and related appurtenances in proper operating condition in order to meet permit requirements and not result in an unauthorized discharge.

23. The EPA inspection and Respondent's responses revealed that the UV disinfection system bulbs are not cleaned on a routine basis in order for the effluent to meet NPDES permit limits for *E. coli*.

24. Respondent's NPDES permit violations, as identified in Paragraphs 16 through 23, are violations of Sections 301(a) and/or 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

**IV. Order for Compliance**

Based on the Factual Allegations and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to take the actions described below.

25. Within sixty (60) days of the effective date of this Order, Respondent shall take appropriate corrective action necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited above, prevent unauthorized discharges, and to come into compliance with all of the applicable requirements of its NPDES permits.

26. Within ninety (90) days of the effective date of this Order, Respondent shall provide

EPA a written description of the actions it has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

27. Respondent shall submit to EPA all submittals by electronic mail until written termination of the Order to:

acord.angela@epa.gov  
Angela Acord, or her successor  
U.S. Environmental Protection Agency – Region 7  
Water, Wetlands and Pesticides Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph.

### **General Provisions**

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

28. 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.

29. 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.

#### **Access and Requests for Information**

30. Nothing in this Order shall limit 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**

31. 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.

### **Parties Bound**

32. This Order shall apply to and be binding upon the Respondent, his agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

### **Failure to Comply**

33. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court for the State of Nebraska may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the CWA as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

### **Judicial Review**

34. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

### **Opportunity to Confer**

35. Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondent. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or may submit information to EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 30 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

**Effective Date**

36. The terms of this Order shall be effective and enforceable against Respondent 30 days after receipt of an executed copy of the Order.

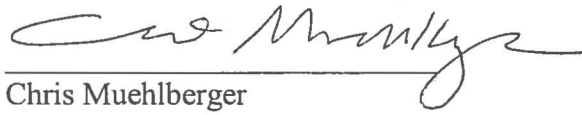
**Termination**

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

Issued this 15<sup>th</sup> day of August, 2016.



Karen E. Eurnoy  
Director  
Water, Wetlands and Pesticides Division



Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel



CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Mr. Bruce Paeper  
Utilities Superintendent  
Pender City Offices  
416 Main Street  
Pender, Nebraska 68047

8/15/2016  
Date

  
Signature