

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION VII  
 901 N. 5<sup>th</sup> STREET  
 KANSAS CITY, KANSAS 66101

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IN THE MATTER OF )  
 )  
 The Omaha Tribe of Nebraska )  
 Macy Wastewater Treatment Facility )  
 Respondent )  
 )  
 NPDES Permit No. NE0061263 )  
 )  
 )  
 Proceedings under Section 309(a)(3) )  
 of the Clean Water Act, 33 U.S.C. )  
 § 1319(a)(3) )  
 \_\_\_\_\_ )

Docket No. CWA-07-2009-0041  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGIONAL HEARING CLERK

FINDINGS OF VIOLATION  
 AND ORDER FOR COMPLIANCE

**I. Statutory Authority**

The following FINDINGS OF VIOLATION are made and 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), and Section 308, 33 U.S.C. § 1318, which authority has been delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division.

**II. Regulatory Framework**

1. The Omaha Tribe of 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") for the city of Macy, Nebraska.

2. The WWTF described in Paragraph 1 is a "point source" that discharges "pollutants" to the Blackbird Creek, 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.

3. 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.

4. The Environmental Protection Agency (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.

5. On or about August 1, 2006, NPDES Permit No. NE0061263 was issued to Respondent by the EPA pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit will expire on September 30, 2011.

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

6. Section B of Respondent's NPDES permit, "Description of Discharge Points," prohibits discharges at any location not authorized under Respondent's NPDES permit.

7. Section D of Respondent's NPDES permit, "Supplemental Conditions," requires Respondent to maintain the facility to ensure the integrity of the components of the treatment system.

8. Section B of the Standard Conditions of Respondent's NPDES permit, "Operation and Maintenance," requires Respondent to operate and maintain all facilities and systems of treatment to achieve compliance with the conditions of the permit.

9. Information provided by Respondent on February 23, 2009 revealed that Respondent has (1) discharged at a location not authorized by Respondent's NPDES permit; (2) failed to ensure the integrity of the components of the treatment system; and (3) failed to operate and maintain all facilities and systems of treatment to achieve compliance with the conditions of the permit. Specifically, Respondent informed EPA that Lagoon Cell 3 of Respondent's WWTF was breached by a rodent burrow, which resulted in an uncontrolled and unpermitted discharge of effluent. Additionally, Respondent informed EPA that the lagoon wastewater level was at or close to capacity

10. Section C of Respondent's NPDES permit, "Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001," requires Respondent to submit to EPA discharge monitoring reports (DMRs), including sample results for effluent quality on a quarterly basis.

11. Since April 2007, Respondent has failed to submit to EPA DMRs with all required information pursuant to Respondent's NPDES permit.

12. Section D of the Standard Conditions of Respondent's NPDES permit, "Reporting Requirements," requires Respondent to report any noncompliance to EPA that may endanger the health or the environment within 24 hours from discovery.

13. Information provided by Respondent on February 23, 2009 revealed that Respondent has been aware of the breached lagoon, as identified in Paragraph 9, since at least June 2008 and that Respondent failed to report to EPA this condition within 24 hours from discovery.

14. Respondent's NPDES permit violations, as identified in Paragraphs 6 through 14, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

#### **IV. Order for Compliance**

15. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. 1319(a)(3), and Section 308, 33 U.S.C. § 1318, Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

16. Immediately upon receipt of this Order, Respondent shall comply with its NPDES permit and the CWA.

17. Immediately upon receipt of this Order, Respondent shall complete the following:

- a. Remove rodent populations at all three lagoons;
- b. Inspect all lagoon cells to assess lagoon integrity and identify any additional damage; and
- c. Repair rodent hole in Lagoon Cell 3 and any additional damage noted during assessment. To insure that the integrity of the engineered lagoon is preserved, all repairs and modifications to the lagoon shall be conducted pursuant to appropriate engineering practices.

18. Within fifteen (15) days of receipt of this Order, Respondent shall submit a written report to EPA detailing the specific actions taken to correct the damaged lagoons and address the violations cited herein.

19. Within ninety (90) days of receipt of this Order, Respondent shall sample Lagoon Cell 3 to determine the operating efficiency of the lagoon system. This sample shall be taken according to the Pre-discharge Sampling Procedures in Section C.3 of Respondent's NPDES permit. Respondent shall report sampling results to EPA by email or FAX immediately upon receiving the sampling results.

20. Respondent shall sample prior to each scheduled draw down discharge, pursuant to Section C.3. of the NPDES permit.

21. Respondent shall submit all DMRs to EPA, pursuant to Section C.2 of Respondent's NPDES permit. DMRs shall be submitted quarterly by the 28<sup>th</sup> day of January, April, July, and October.

22. In order to assure integrity of the wastewater treatment system, Respondent shall perform routine operations and maintenance, pursuant to Section B of Standard Conditions in the NPDES permit.

23. All reports and notifications herein required shall be submitted to:

Kimberly Willis  
Compliance Officer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

## **V. General Provisions**

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

24. Compliance with the terms of this Order for Compliance shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

25. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, State and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

26. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 Section 309 of the Act, 33 U.S.C. § 1319, 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 Act for any violation whatsoever.

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

27. 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**

28. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial 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.

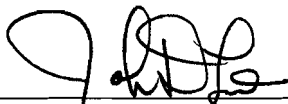
**Effective Date**


29. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

**Termination**

30. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



 William A. Spratlin, Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101



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