

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD

LENEXA, KANSAS 66219

APR 15 AM 9:53

IN THE MATTER OF)

The VILLAGE OF WINNEBAGO,)
NEBRASKA)

CONSENT AGREEMENT
FINAL ORDER

Docket No. CWA-07-2013-0001

Proceeding under Section 309(a)(3))
Of the Clean Water Act,)
33 U.S.C. §1319(a)(3))

The United States Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and the Village of Winnebago, Nebraska (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

COMPLAINT

1. This CA/FO is being filed under the authority vested in the Administrator of EPA, pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g) and in accordance with the Consolidated Rules, 40 C.F.R. Part 22 Subpart I (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act).

2. This CA/FO alleges that the Respondent violated the terms of its National Pollutant Discharge Elimination System (“NPDES”) permit and, as such, violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

JURISDICTION

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 NPDES permit issued pursuant to that Section.

4. The 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. The Village of Winnebago Waste Water Treatment Facility (“WWTF”) (hereinafter “Respondent”), is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), owns and operates a WWTF for the Village of Winnebago, Nebraska.

6. The Village of Winnebago WWTF is a “point source” that discharges “pollutants” to Omaha 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.*

7. To implement Section 402 of the CWA, EPA promulgated regulations codified at 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.

FINDINGS OF FACT

8. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. Respondent owns and operates a publicly owned treatment works (“POTW”), as defined by 40 C.F.R. § 403.3(q), which receives and treats wastewater from various domestic and industrial sources.

10. The POTW is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

11. The POTW causes the “discharge of pollutants” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

12. The POTW discharges pollutants into Omaha Creek. Omaha Creek is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

14. On July 26, 2011, NPDES Permit No. NE-0113212 was issued to Respondent by EPA pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit will expire on July 25, 2016.

FINDINGS OF VIOLATION

15. The facts stated in Paragraphs 7 through 14 above are herein incorporated.
16. Part I. B of Respondent's NPDES permit authorizes discharges from the outfalls specifically designated as discharge locations. Discharge to any location not authorized under an NPDES permit is a violation of the CWA.
17. On October 14, 2011, the Village reported to the EPA an unauthorized discharge of wastewater from the WWTF lagoons into Omaha Creek resulting from a break in the force main. On the same date, a representative from the Nebraska Department of Environmental Quality investigated and verified the discharge.
18. The above-referenced discharge did not occur at an outfall specifically designated in Respondent's NPDES permit.
19. Respondent's discharge from an area not specifically designated in Respondent's NPDES permit is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

CONSENT AGREEMENT

20. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.
21. Respondent admits the jurisdictional allegations set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.
22. Respondent neither admits nor denies the factual allegations set forth above.
23. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.
24. Respondent and EPA agree to bear their respective costs and attorney's fees incurred as a result of this action.
25. This CA/FO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or other applicable law.
26. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

27. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

28. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$16,000.

29. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent shall pay a civil penalty of Sixteen Thousand dollars (\$16,000.00) within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

This payment shall reference docket number CWA-07-2013-0001.

2. A copy of each check shall be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Chris Muehlberger
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. This executed CA/FO shall be returned to the Regional Hearing Clerk, EPA, 11201 Renner Boulevard, Lenexa, Kansas 66219.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

11.20.12
Date

Chris Muehlberger
Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel

11.20.12
Date

RESPONDENT:
VILLAGE OF WINNEBAGO, NEBRASKA

Keith Chamberlain

By

Chairman

Title

Date: 11/9/12

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

1/15/13
Date

IN THE MATTER OF The Village of Winnebago, Nebraska, Respondent
Docket No. CWA-07-2013-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Christopher Muehlberger
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Mail to:

Michelle M. Schlecht, Esq.
Cople, Rockey, McKeever & Schlecht P.C., L.L.O.
14680 West Dodge Road, Suite 3
Omaha, Nebraska 68154

Dated: 4/15/13



Kathy Robinson
Hearing Clerk, Region 7