



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202-2733

November 14, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7011 0110 0001 3590 6254

Mr. Greg Epperson, Superintendent  
Central Consolidated School District #22  
583 County Road 6100  
Kirtland, NM 87417

Re: Administrative Order Docket Number: CWA-06-2011-1817  
Notice of Proposed Assessment of Class I Civil Penalty  
Docket Number: CWA-06-2011-1851  
NPDES Permit Number: NM0029319

Dear Mr. Epperson:

Enclosed are an Administrative Order (AO) and an Administrative Complaint (Complaint) issued to Central Consolidated School District #22 for violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Violations were identified during our review of the permit file for your wastewater treatment facility. The violations alleged include, but are not limited to, the following:

1. Failure to meet effluent limitations for E. Coli, Total Residual Chlorine, Total Suspended Solids, and Fecal Coliform; and
2. failure to comply with permit limitations.

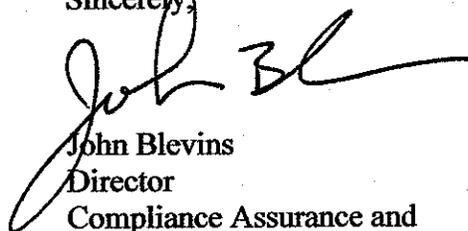
The AO requires certification of compliance with applicable federal regulations within thirty (30) days of receipt of the AO.

The Complaint assesses a monetary penalty for the violations. If it can be demonstrated that the violations cited in the AO have been corrected in a timely manner, EPA has the right to negotiate the penalty amount down or perhaps mitigate the penalty amount partially by way of a Supplemental Environmental Project (SEP). The SEP must benefit the environment in the watershed where the violations occurred and must not be required by the permit or other laws.

You, as the representative of the Central Consolidated School District #22, have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. Note that should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$9,000.00 may be assessed against you without further proceedings. Whether or not you request a hearing, we invite you to confer informally with the EPA.

The EPA is committed to ensuring compliance with the requirements of the NPDES program, and my staff will assist you in any way possible. If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Ms. Sonia Hall at (214) 665-7490 or Ms. Carol Peters at (214) 665-7285.

Sincerely,



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosures

cc: w/Complaint - Regional Hearing Clerk (6RC-D)

Mr. James Bearzi, Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Mr. George McFall, Maintenance Supervisor  
Central Consolidated School District #22  
583 County Rd. 6100  
Kirtland, NM 87417



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Region 6 • 1445 Ross Avenue, Suite 1200 • Dallas, TX 75202-2733  
**FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE**  
Docket Number: CWA-06-2011-1817, NPDES Permit Number: NM0029319

STATUTORY AUTHORITY

The following findings are made, and Order issued, under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. The Central Consolidated School District #22 ("Respondent") is a school district chartered under the laws of the State of New Mexico and, as such, is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this Order ("all times relevant"), Respondent owned or operated the Central Consolidated School District wastewater treatment plant, located at 583 County Road 6100, in Kirtland, San Juan County, New Mexico ("facility"), and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant, the facility was a "point source" of a "discharge" of "pollutants" because municipal wastewater was discharged to the receiving waters of the San Juan River in Segment 20.6.4.401 of the San Juan River Basin, which is considered a "water of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is

subject to the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. NM0029319 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on March 1, 2006, expired on February 28, 2011, and was administratively continued. At all times relevant, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Parts III.C and III.D of the permit require Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures in order to determine the facility's compliance or noncompliance with the permit and applicable regulations. These provisions also require Respondent to file with EPA certified Discharge Monitoring Reports ("DMRs") of the results of monitoring and Noncompliance Reports when appropriate. Respondent did not submit DMRs to EPA for the period of January 2007 through January 2008.

9. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in the enclosed Attachment A.

10. Certified DMRs filed by Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit. The violations are specified in the enclosed Attachment B.

11. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in its permit was a violation of the permit and Section 301 of the Act, 33 U.S.C. § 1311. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on the foregoing Findings and pursuant to the authority of Section 309 of the Act, EPA hereby orders Respondent to take the following actions:

A. Within thirty (30) days of the effective date of this Order, Respondent shall certify compliance with permit effluent limitations for E. Coli (Daily Maximum and 30 Day Averages); Total Residual Chlorine ("TRC") (Instant Maximum); Total

Suspended Solids ("TSS") (30 Day and 7 Day Averages); and Fecal Coliform (Daily Maximum and 30 Day Averages).

B. Within thirty (30) days of the effective date of this Order, Respondent shall also provide the EPA with a list of all mechanical and operational deficiencies and a narrative describing the specific actions taken to correct violations for E. Coli (Daily Maximum, and 30 Day Averages); TRC (Instant Maximum); TSS (30 Day and 7 Day Averages); and Fecal Coliform (Daily Maximum and 30 Day Averages).

C. In the event it will take Respondent longer than thirty (30) days to correct effluent limitation non-compliance, a schedule for repair/correction shall be submitted to the EPA for review and approval. The schedule shall be submitted to the EPA within thirty (30) days of the effective date of this Order.

D. Any approved compliance schedule will be incorporated and reissued in a future administrative order.

E. Within thirty (30) days of the effective date of this Order, Respondent shall also submit to the EPA completed DMRs from January 2007 through January 2008.

F. To ask questions or comment on this matter, please contact Ms. Sonia Hall at (214) 665-7490 or Ms. Jessica Esquivel at (214) 665-7285.

G. Any information or correspondence submitted by Respondent to EPA under this Order shall be addressed to the following:

Ms. Sonia Hall  
Water Enforcement Branch (6EN-WC)  
EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

#### GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remain in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

11.14.11

Date

  
John Blevins  
Director

Compliance Assurance and  
Enforcement Division

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

In the Matter of	§ Docket No. CWA-06-2011-1851
	§
Central Consolidated School District #22	§ Proceeding to Assess a Class I
	§ Civil Penalty under Section 309(g)
Respondent	§ of the Clean Water Act
	§
NPDES No. NM0029319	§ ADMINISTRATIVE COMPLAINT

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 through 22.52.

Based on the following Findings, Complainant finds that Central Consolidated School District #22 (“Respondent”) has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Respondent is a school district chartered under the laws of the State of New Mexico, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this Order ("all relevant times"), Respondent owned or operated the Central Consolidated School District's wastewater treatment plant, located at 853 Road 6100, in Kirtland, San Juan County, New Mexico ("facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants" because municipal wastewater was discharged to the receiving waters of the San Juan River in Segment 20.6.4.401 of the San Juan River Basin, which is considered a "water of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the

authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. NM0029319 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on March 1, 2006, expired on February 28, 2011, and was administratively continued. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Parts III.C and III.D of the permit require Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility's compliance or non-compliance with the permit and applicable regulations. These provisions also require Respondent to file with EPA certified Discharge Monitoring Reports ("DMRs") of the results of monitoring, and Non-Compliance Reports when appropriate. Respondent did not submit DMRs to EPA for the period of January 2007 through January 2008.

9. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Attachment A to

the Administrative Order, Docket No. CWA-06-2011-1817 ("Administrative Order"), issued by EPA to Respondent, the contents of which are incorporated herein by reference.

10. Certified DMRs filed by Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit. The violations are specified in Attachment B to the Administrative Order, the contents of which are incorporated herein by reference.

11. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in its permit was a violation of the conditions of the permit and/or regulations described herein and a violation of Section 301 of the Act, 33 U.S.C. § 1311.

12. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

13. EPA has notified the New Mexico Environment Department of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

14. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as

required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. Proposed Penalty

15. Based on the foregoing Findings, and pursuant to the authority of Section 309(g)(1) and Section(g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondent a civil penalty of nine thousand dollars (\$9,000.00).

16. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

17. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act. Pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554, and Respondent waives this right unless Respondent in its Answer requests a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

18. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an answer to this complaint within thirty (30) days after service of this complaint whether or not Respondent requests a hearing as discussed below.

19. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

20. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

21. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following

EPA attorney assigned to this case:

Mr. Tucker Henson (6RC-EW)  
Water Enforcement Legal Branch  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

22. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

**V. Notice of Opportunity to Request a Hearing**

23. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, including 40 C.F.R. § 22.50 through § 22.52.

24. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the

requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

25. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

#### VI. Settlement

26. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Sonia Hall at (214) 665-7490 or Ms. Carol Peters at (214) 665-7285.

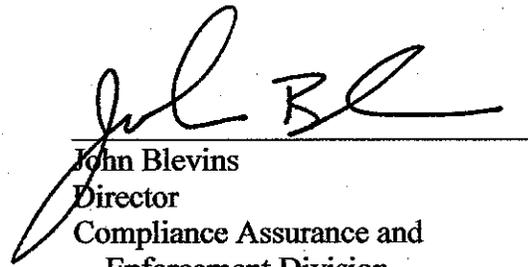
27. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and

given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

28. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

11.14.11

Date



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

Copy by certified mail,  
return receipt requested: Mr. Greg Epperson, Superintendent  
Central Consolidated School District #22  
583 County Rd. 6100  
Kirtland, NM 87417

Copy: Mr. James Bearzi, Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environmental Department  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Mr. George McFall  
Maintenance Supervisor  
Central Consolidated School District #22  
583 County Rd. 6100  
Kirtland, NM 87417

Copy hand-delivered: Mr. Tucker Henson (6RC-EW)  
Water Enforcement Legal Branch  
U.S. EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

Dated: \_\_\_\_\_