

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
The Village of Pender, Nebraska)	Docket No. CWA-07-2017-0004
Wastewater Treatment Facility)	
)	
Respondent)	CONSENT AGREEMENT/ FINAL ORDER
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

The U.S. Environmental Protection Agency, Region 7 (“EPA”) and the Village of Pender, Nebraska Wastewater Treatment Facility 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, 40 C.F.R. Part 22 (“Consolidated Rules”).

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that the Respondent discharged pollutants into waters of the United States in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. Respondent, the Village of Pender, Nebraska Wastewater Treatment Facility ("Respondent") owns and operates a Wastewater Treatment Facility ("WWTF"), addressed at 416 Main Street, Pender, NE.

Statutory and Regulatory Framework

5. 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.

6. 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.

Factual Background

7. 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.

8. 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.*

9. 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.

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

11. 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.

12. 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).

13. 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.

14. 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.

15. 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.

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

17. 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.

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

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

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

20. 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.

21. 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

22. 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."

23. 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

24. 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.

25. 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

26. 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.

27. 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*.

Respondent's NPDES permit violations, as identified in Paragraphs 20 through 27, are violations of Sections 301(a) and/or 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

CONSENT AGREEMENT

28. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any proceeding to enforce the terms of the Final Order.

29. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

30. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

31. Respondent and Complainant each agree to bear their own costs and attorney's fees.

32. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

33. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

34. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of Sections 301 and 402 of the CWA.

35. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 34 above, of this CA/FO.

Supplemental Environmental Project

36. Respondent agrees to undertake a Supplemental Environmental Project ("SEP"), which involves the purchase and installation of 24 LED street light bulbs to replace the Village's existing incandescent bulbs. The parties agree that performance of the SEP is intended to secure significant environmental protection.

37. Respondent agrees that within 30 days of the effective date of this Final Order, Respondent shall submit a Work Plan to EPA that describes the details and implementation of the SEP identified above. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the estimated start date and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments within thirty (30) days of receipt. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA's

comments within thirty (30) days after receipt of EPA's written comments. The Work Plan shall become a Final Work Plan upon approval by EPA and shall be incorporated into the terms of this CA/FO. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than six months from the effective date of this Final Order.

38. Respondent shall notify EPA in writing within two weeks after the completion of the SEP. Within sixty (60) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

- a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.
- b. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
- c. An itemized accounting of the costs incurred per project in performance of the SEP.

39. Respondent shall pay stipulated penalties in the following circumstances:

- a. Except as provided in subparagraphs (b) and (c) below, for a SEP which has not been completed satisfactorily pursuant to the approved SEP Work Plan as described above and as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount of Six Thousand Dollars (\$6,000), along with interest accrued at the statutory rate.
- b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 80% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.
- c. If the SEP is satisfactorily completed, but the Respondent spent less than 80% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Respondent's Work Plan and the amount expended in implementing the SEP.
- d. If no SEP is implemented and the penalty of Seven Thousand Nine Hundred Dollars (\$7,900) is not paid within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Ten Thousand Three Hundred Dollars (\$10,300), along with interest accrued at the statutory rate.

40. Payment of the stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with the provisions of this Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by check, cashier's, or certified check made payable to the "United States Treasury" and shall be remitted to:

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

The check shall note the case title and the docket number. A copy of the check shall be sent to Chris Muehlberger, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

41. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other enforcement action or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

42. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to property not owned by Respondent that is the location of a SEP at all reasonable times to monitor Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

PENALTY

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:

43. Respondent shall pay a civil penalty of Seven Thousand Nine Hundred Dollars (\$7,900). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

44. 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.

45. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this Consent Agreement and Final Order.

46. This Consent Agreement and Final Order shall apply to and be binding upon the Respondent, its 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 CA/FO.

Effective Date

47. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

Reservation of Rights

48. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

49. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Chris Muehlberger
Assistant Regional Counsel

Date

RESPONDENT:

For the Village of Pender, Nebraska:

Chairman Village Board
Name/Title

William E. [Signature]
Signature

12-20-16
Date

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Mark Hague
Regional Administrator

Date