

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
Broken Bow, Nebraska ) Docket No. CWA-07-2020-0055  
Respondent ) COMPLAINT AND  
Proceedings under Section 309(g) of the ) CONSENT AGREEMENT/  
Clean Water Act, 33 U.S.C. § 1319(g) ) FINAL ORDER  
\_\_\_\_\_ )

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, city of Broken Bow, Nebraska (“Respondent”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

**Parties**

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondent is and was at all relevant times a municipality organized under the laws of the state of Nebraska.

### **Statutory and Regulatory Framework**

6. 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 in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States,” which in turn has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

9. To implement Section 402 of the CWA, the 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.

10. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works (“POTW”) includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

11. The Nebraska Department of Environment and Energy (“NDEE”) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### **EPA’s General Allegations**

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

13. Respondent is the owner and/or operator of a POTW in Broken Bow, Nebraska, that includes a sewage collection system, which receives wastewater from various domestic and non-domestic sources, and a wastewater treatment facility (“WWTF”), consisting of two sequencing batch reactors (“SBRs”), a two sludge holding ponds, and a UV disinfection system.

14. The WWTF discharges through an outfall to an undesignated tributary of Mud Creek (“Outfall 001”). Mud Creek is a tributary to the South Loup River, which is a tributary to the Platte River. The undesignated tributary and Mud Creek are “waters of the United States” and, therefore, “navigable waters” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15. Mud Creek is impaired by *E. coli*, for which a Total Maximum Daily Load (TMDL) was placed and approved for Mud Creek in May 2012.

16. The WWTF is a “point source” that “discharges pollutants” to “navigable waters” of the United States, as these terms are defined by Section 502(14), (12) and (7) of the CWA, 33 U.S.C. § 1362(14), (12) and (7), respectively.

17. On April 1, 2016, the NDEE issued NPDES permit number NE0027260 to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“NPDES Permit”), effective until March 31, 2021. The NPDES Permit authorizes discharges from the WWTF to the undesignated tributary to Mud Creek subject to conditions and limitations set forth in the Permit.

18. Respondent’s NPDES Permit contains requirements to monitor influent, including flow, and effluent limits, narrative limits.

19. On May 30, 2018, NDEE conducted a NPDES Municipal Mechanical Compliance Inspection at the POTW. The NDEE inspection report noted that the mixed wastewater in the east SBR unit appeared to be thin and light in color and that the facility has been unable to comply with ammonia limitations and exceeded *E. coli* limitations. NDEE issued a Notice of Violation to Respondent on June 25, 2018 for the failure to comply with ammonia and *E. coli* limits.

20. On May 13-16, 2019, EPA performed a Compliance Sampling Inspection of the City’s WWTF (“Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

21. During the Inspection, the EPA inspector reviewed and collected copies of records relating to the Permit, observed the City’s POTW, including the collection system, WWTF, and discharge location, and collected influent and effluent samples.

22. At the conclusion of the Inspection, the EPA inspector provided the City a Notice of Potential Violation (“NOPV”), which described the inspector’s preliminary observations regarding potential violations, including, but not limited to, failure to meet effluent limits, failure for effluent to meet narrative limits, failure to calibrate flow meter, and failure to submit sludge reports to the EPA.

23. The City provided information to the inspector by email on or about May 24, 2019, following the Inspection.

24. A copy of the Inspection Report was sent to the City on or about July 3, 2019. A copy of the revised Inspection Report was sent to the City on or about October 10, 2019

**EPA's Allegations**

**Count 1**

**Failure to Comply with Effluent Limitations**

25. The facts stated above are re-alleged and incorporated herein by reference.

26. Part I of Respondent's NPDES Permit establishes discharge limits and monitoring requirements for Outfall 001, including seasonal monthly average and daily maximum limits for ammonia in Part 1.B, and monthly and maximum geometric mean limits for the recreation season from May through September for *E. coli* in Part 1.C.

27. Part IV.A of Respondent's NPDES Permit requires that the 30-day average percent removal of Carbonaceous Biochemical Oxygen Demand ("CBOD") and Total Suspended Solids ("TSS") by the WWTF shall not be less than 85%.

28. Based on observations and sampling documented during the EPA Inspection, review of information provided by the City, effluent monitoring data for the WWTF, and other relevant information, the EPA finds that in 22 months from September 2016 to May 2019, the City violated the effluent limitations and removal requirements for Outfall 001 set forth in its NPDES Permit as follows:

a. Ammonia

- i. Monthly average mass loading: October 2016, November 2016, December 2016, January 2017, June 2017, July 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, February 2019, and March 2019;
- ii. Daily maximum mass loading: September 2016, October 2016, November 2016, December 2016, January 2017, April 2017, June 2017, July 2017, August 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, October 2018, February 2019, and March 2019;
- iii. Monthly average concentration: October 2016, November 2016, December 2016, January 2017, June 2017, July 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, February 2019, and March 2019;
- iv. Daily maximum concentration: September 2016, October 2016, November 2016, December 2016, January 2017, April 2017, June 2017, July 2017, August 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, October 2018, February 2019, and March 2019.

b. *E. coli*

- i. Monthly geometric mean: July 2017 and September 2017;
- ii. Maximum geometric mean: September 2016, June 2017, July 2017, August 2017, September 2017, June 2018, and May 2019.

- c. 85% Removal Efficiency of CBOD and TSS:
  - i. TSS: January 2017, April 2017, May 2017 and July 2017;
  - ii. CBOD: May 2017, June 2017, and July 2017.

29. Each failure to comply with effluent limitations is a violation of the terms and conditions of 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), 1342(p).

**Count 2  
Failure to Comply with Narrative Limits**

30. The facts stated above are re-alleged and incorporated herein by reference.

31. Part IV.B.2 of Respondent's NPDES Permit requires that discharges shall not contain pollutants at concentrations or levels that produce objectionable films, colors, turbidity, deposits, or noxious odors in the receiving stream or waterway.

32. During the EPA Inspection, the inspector observed three discharges from Outfall 001 into the undesignated tributary to Mud Creek. During each of the discharge, the effluent became very discolored and contained a considerable amount of floating material in it after approximately five minutes.

33. The failure to comply with narrative limits is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

**Count 3  
Failure to Calibrate Flow Meter**

34. The facts stated above are re-alleged and incorporated herein by reference.

35. Part II of Respondent's NPDES Permit requires influent wastewater to be monitored for flow at the head-works of the WWTF. Standard Condition 19.e of Respondent's NPDES Permit require representative sampling, including, in subpart iv, that flow measurement devices be calibrated and maintained to insure the accuracy of the measurements. In addition, Standard Condition 12 of Respondent's NPDES Permit requires that the permittee retain records of all monitoring information, including calibration records.

36. During the EPA Inspection, facility personnel stated that the flow meter located downstream of the last lift station and upstream of the headworks of the WWTF has not been calibrated.

37. The failure to calibrate the flow meter and retain calibration records is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

**Count 4  
Failure to Monitor and Report Parameters as Required**

38. The facts stated above are re-alleged and incorporated herein by reference.

39. Part I.A of Respondent's NPDES Permit establishes monitoring requirements for Outfall 001, including monthly average and daily maximum concentration for Total Nitrogen and Total Phosphorous. Standard Condition 14.d of Respondent's NPDES Permit requires monitoring results to be reported on a quarterly basis.

40. Respondent failed to monitor and report for parameters including, but not limited to, Total Phosphorous and Total Nitrogen as required in July 2015.

41. The failure to monitor and report levels of parameters in the discharge of wastewater from Outfall 001 as specified is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

**Count 5  
Failure to Submit Annual Sludge Reports to EPA**

42. The facts stated above are re-alleged and incorporated herein by reference.

43. Federal regulations at 40 C.F.R. Part 503 and Part III.A of Respondent's NPDES Permit require that the City submit an annual sludge report to EPA by February 19 of each year.

44. The City failed to submit annual sludge reports to the EPA by February 19 in 2016, 2017, and 2018.

45. The failure to submit annual sludge reports to EPA is a violation of 40 CFR Part 503 and the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

**Penalty**

46. As alleged by the EPA above, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, for violations that occurred after November 2, 2015, where penalties are assessed on or after February 6, 2019, Respondent is liable for civil penalties of up to \$21,933 per day for each day during which the violation continues, up to a maximum of \$274,159.

**CONSENT AGREEMENT**

47. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

48. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

49. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

50. Respondent waives its right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

51. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

52. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

53. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

54. Respondent certifies by the signing of this Consent Agreement/Final Order that the POTW Site is in current compliance with its NPDES Permit and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

#### **Penalty Payment**

55. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Six Thousand and Five Hundred Dollars (\$6,500)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

56. Respondent shall pay the penalty identified above by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2020-0055 to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077

St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

57. Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to the following:

Lisa Haugen  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Shane McCoin  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

58. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

59. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

#### **Effect of Settlement and Reservation of Rights**

60. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

61. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

62. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.



63. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

64. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

### **General Provisions**

65. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

66. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

67. The state of Nebraska has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

68. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

69. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

**For the Complainant, United States Environmental Protection Agency Region 7:**

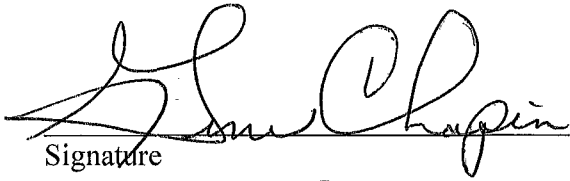
\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shane E. C. McCain  
Office of Regional Counsel

**For the Respondent, City of Broken Bow:**

  
Signature

1-14-20  
Date

Gene Chapin  
Name

Chairperson  
Title

**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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by First Class Mail to Respondent:

The Honorable Jonathon Berghorst  
Mayor, Broken Bow  
314 South 10th Ave  
Broken Bow, Nebraska 68822;

Copy emailed to Attorney for Complainant:

Shane McCoin  
U.S. Environmental Protection Agency Region 7  
*mccoin.shane@epa.gov*

Copy by First Class Mail to the Nebraska Department of Environment and Energy:

Steve Goans  
Water Management Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922.

\_\_\_\_\_  
Date