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**U.S. EPA REGION 7
HEARING CLERK**

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2025-0139
Kickapoo Tribe of Indians of the	)	
Kickapoo Reservation in Kansas	)	
	)	
	)	ADMINISTRATIVE ORDER
	)	FOR COMPLIANCE ON CONSENT
Respondent	)	
	)	
Proceedings under Section 309(a)(3) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)(3)	)	
	)	

INTRODUCTION

1. The U.S. Environmental Protection Agency (“EPA”), Region 7, and the Kickapoo Tribe of Indians of the Kickapoo Tribe in Kansas (“Kickapoo Tribe in Kansas” and/or “Tribe”) enter into this Administrative Order on Consent (Consent Order) to resolve noncompliance with the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3) at the Kickapoo Housing Site Number 1 Wastewater Treatment Facility (“Housing Site Number 1 WWTF” or “WWTF”).

2. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order on Consent”) are made and issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division with concurrence of the Regional Counsel.

3. Respondent is the Kickapoo Tribe in Kansas (“Respondent” or “Tribe” Respondent is the owner and/or operator of the WWTF located generally within in the city of Horton, Kansas. The Housing Site Number 1 WWTF is located within the Kickapoo Tribe in Kansas Tribal Reservation.

4. The EPA issues this Section 309(a)(3) Order for the purpose of carrying out the objective of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

5. It is the Parties' intent through entering into this Order to address Respondent's alleged noncompliance with the CWA and violation of its National Pollutant Discharge Elimination System ("NPDES") permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES Permit.

6. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

7. 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 an NPDES permit issued pursuant to that Section.

8. 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.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the "waters of the United States."

10. 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.

11. Respondent's Housing Site Number 1 WWTF is located within the northwest quarter, of the southeast quarter of Section 8, Township 4 south, Range 16 east, Brown County, Kansas. The WWTF is located within the Kickapoo Tribe of Kansas Tribal Reservation, which is Indian country, as defined in 18 U.S.C. § 1151.

12. Because Respondent's WWTF is in Indian country, as that term is defined in 18 U.S.C. § 1151, the EPA is the proper authority to administer the federal NPDES program pursuant to Section 402 of the CWA.

Allegations of Fact and Conclusions of Law

13. The Tribe is a federally recognized tribe under Section 104 of the Federally Recognized Indian Tribe List Act, now codified at 25 U.S.C. § 5131, and 89 Fed. Reg. 99899, 99900, (Dec. 11, 2024).

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

15. Respondent owns and operates a Publicly Owned Treatment Works (“POTW”), as defined by 40 C.F.R. § 403.3(q), and includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes, and other conveyances of wastewater. Respondent’s WWTF receives and treat wastewater from various domestic and commercial sources.

16. On October 5, 2023, the EPA reissued NPDES permit number KS0095206 (“NPDES Permit”) to the Kickapoo Housing Site Number 1 WWTF pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The KS0095206 NPDES permit will expire October 4, 2028. The current NPDES Permit reissued the previous NPDES Permit in effect from June 18, 2018, through June 17, 2023.

17. Respondent's NPDES Permit authorizes the WWTF to discharge pollutants only from a specified point source, identified in Respondent’s NPDES Permit as "Outfall 001" for the discharges from a four-cell lagoon wastewater treatment facility subject to the effluent limitations and conditions set forth in the Respondent’s NPDES Permit.

18. 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.

19. The Respondent’s WWTF Outfall 001 discharges to an unnamed tributary that flows year-round and connects to the Delaware River, a traditionally navigable water. The unnamed tributary and Delaware River are “waters of the United States” within the meaning of “navigable waters,” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

20. Respondent’s NPDES Permit Table 1 “Effluent Pollutant Parameters and Monitoring Frequency” sets forth the following effluent limitations and monitoring requirements for the discharge of effluent from the WWTF through Outfall 001:

Effluent Parameter	Discharge Limit
Ammonia, Total as N March 1- October 31	Daily Maximum – 1.77 mg/L Monthly Average – 0.88 mg/L
Ammonia, Total as N November 1- February 28 (29)	Daily Maximum – 4.31 mg/L Monthly Average – 2.15 mg/L
Five Day Biochemical Oxygen Demand (BOD ₅)	Monthly Average – 30 mg/L Weekly Average – 45 mg/L

pH	6.0 – 9.0 standard unit
Five Day Biochemical Oxygen Demand (BOD ₅) Percent Removal	Monthly Average Minimum of 85% removal

21. Respondent’s NPDES Permit Table 1 “Effluent Pollutant Parameters and Monitoring Frequency” requires effluent sampling for the effluent parameters identified above the next day after the beginning of the discharge or if the discharge continues for more than two weeks, additional sampling after the 14th day. Additionally, Table 1 “Effluent Pollutant Parameters and Monitoring Frequency” requires the Respondent to monitor and report the flow in million gallons per day (“MGD”) each day during a discharge. It also requires total flow to be monitored and reported during the final day of drawdown.

22. Respondent’s NPDES Permit, Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001, Part C.3., requires, “the Permittee shall submit discharge monitoring reports (DMRs) quarterly to EPA as required under Attachment A, Standard Condition, Part D.4 of this permit.” Further requiring all “monitoring reports shall be submitted on or before the 28th day of January, April, July, and October.” During quarters when no discharge occurs during the any month of that quarter, written notification is still required stating “no discharge”, and influent monitoring is still required during periods without an effluent discharge.

23. Respondent’s NPDES Permit, Supplemental Conditions, Part D.1., requires, “The Permittee shall maintain the [WWTF] and related appurtenances in proper operation condition and shall be operated in a manner to meet the permit requirements and not result in a prohibited bypass or an unauthorized discharge.” See also Standard Conditions, Part B.1.

24. Respondent’s NPDES Permit, Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001, Part C.4., requires, “The Permittee shall control vegetation in and around the lagoon system as needed to preserve the integrity of the cells and prevent the lagoon system itself from being compromised. The Respondent’s NPDES Permit, Supplemental Conditions, Part D.1., requires that Respondent, “shall maintain the lagoon system to ensure the integrity of the lagoon cells and the site around the [WWTF] in a manner that will allow adequate and oversight of the [WWTF].” Maintenance activities shall include, but not be limited to, regular mowing of the area, grassed dikes to prevent growth of trees or woody plants, prompt removal of emergent vegetation from the lagoon cell, and monthly walk around and visual inspection of each lagoon cell for breaches, animal activity, or any condition that may create damage to the lagoon dikes. Damage shall be promptly repaired. All maintenance activity is required to be entered in a logbook and retained as a record, in accordance with the Standard Condition of the Respondent’s NPDES Permit.

25. The Respondent’s NPDES Permit, Standard Conditions Part C.8., Retention of Records requires, in pertinent part, the Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip charts recordings for continuous monitoring instrumentation, and copies of all reports required be this permit, for a period of at least three years from the date of the sample, measurement, or report.

26. On July 12-13, 2023, the EPA performed a Compliance Evaluation Inspection of the WWTF (“Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

27. During the Inspection, the EPA inspector reviewed documents, including DMRs and other monitoring data collected for the period January 2019 to July 2023. A Notice of Preliminary Findings was provided to the Respondent after the inspection on July 14, 2023.

28. A copy of the Inspection Report was transmitted to the Respondent on or about November 13, 2023.

29. On or about August 15, 2024, the EPA issued a Notice of Noncompliance and a Request for Information to the Respondent pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requiring submittal of information regarding, among other things, a description of how records are maintained, copies of monthly maintenance inspections of the lagoons, description of work conducted to address inoperable devices found during the EPA inspections, copies of outfall inspections, and any photos taken to document actions taken to remedy the violations identified in the Notice of Noncompliance and described in the EPA inspection. The Respondent submitted responses to the information request by email received November 19, 2024, (“Tribe’s Information Request Response”). Additionally, the EPA reviewed Discharge Monitoring Reports from August 2023 through July 2025.

The EPA’s Findings

Count 1: Failure to Monitor and Record a Discharge

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

31. The Respondent’s NPDES Permit authorizes controlled discharge from Outfall 001 only when required monitoring activities take place during each day of a controlled discharge. The Respondent’s NPDES Permit requires effluent flow to be monitored and recorded daily as MGD each day during a discharge, the total flow from the draw down monitored and recorded on the final day of the discharge, record the days of duration for each discharge event, and meet the Respondent’s NPDES Permit effluent limits.

32. The EPA Inspector observed and documented the WWTF Outfall 001, discharging to the unnamed tributary to the Delaware River at the time of the EPA Inspection. The Respondent was not monitoring or recording the discharge event, as required by the Respondent’s NPDES Permit.

33. The Respondent’s failure to comply with monitoring and recording requirements is a violation of the terms and conditions of Respondent’s NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 2: Failure to Comply with Effluent Limitations

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

35. Table 1 “Effluent Pollutant Parameters and Monitoring Frequency” section of the Respondent’s NPDES Permit contain the monitoring requirements and limitations for the discharge of effluent from the WWTF through Outfall 001, as described in Paragraph 20 above.

36. The WWTF effluent discharge through Outfall 001 exceeded the permit limitations for the following parameters:

- a. Ammonia as N
 - The monthly average limitations for concentration were exceeded in June and September of 2021, and November 2024.
 - The daily maximum limitations for concentration were exceeded in September 2021 and November 2024.
- b. BOD5
 - The minimum removal percentage limitations were exceeded in November 2024.
- c. TSS
 - The minimum removal percentage limitations were exceeded in November 2024.
- d. E. coli
 - The single sample limitations for colony forming units were exceeded in June of 2022.

37. Each failure to comply with effluent limitations is a violation of the terms and conditions of Respondent’s NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3: Failure to Submit Discharge Monitoring Reports

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

39. Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001, Part C.3., of Respondent’s NPDES Permit requires Respond to submit DMRs quarterly to the EPA as required under Attachment A, Standard Condition, Part D.4., of the Respondent’s NPDES Permit, further requiring all “monitoring reports shall be submitted on or before the 28th day of January, April, July, and October.” During quarters when no discharge occurs during the any month of that quarter, written notification is still required stating “no discharge” and influent monitoring is still required during periods without an effluent discharge.

40. Based on DMR data reported to the EPA through NetDMR, no information was reported (also known as “DMR nonreceipt”) for the following months: in 2025- January, February, and March; in 2024 – May; in 2023 – March, June, August, November, December; in

2022 – January through September; and in 2021 – January, February, April, May, July, August, October, November, and December.

41. The failure to submit the required DMRs to the EPA, as described in the paragraphs above, is a violation of the terms and conditions of Respondent's NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 4: Failure to Operate and Maintain WWTF Equipment

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

43. The Respondent's NPDES Permit, Supplemental Conditions, Part D.1., requires, "The Permittee shall maintain the [WWTF] and related appurtenances in proper operation condition and shall be operated in a manner to meet the permit requirements and not result in a prohibited bypass or an unauthorized discharge."

44. Based on observations made during the EPA Inspection, not all the WWTF's treatment equipment was operational or being maintained including non-operational surface aerators at lagoon cells A1 and B1.

45. The Respondent's NPDES Permit, Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001, Part C.5., requires, "The Permittee shall control vegetation in and around the lagoon system as needed to preserve the integrity of the cells and prevent the lagoon system itself from being compromised. The Respondent's NPDES Permit, Supplemental Conditions, D.1., also requires, "The [P]ermittee shall maintain the lagoon system...including...regular mowing of the area around the lagoon system and the grassed dikes to prevent growth of trees or woody plants, prompt removal of cattails, reeds, and other emergent vegetation from the lagoon cells as they appear."

46. Based on observations made during the EPA Inspection, the Housing Site WWTF lagoon cells A1 and B1 were covered in algae and had tall woody vegetation on the interior and exterior berms.

47. The failure to operate and maintain the Respondent's treatment facilities and equipment, as described in the paragraphs above, is a violation of the terms and conditions of Respondent's NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 5: Failure to Conduct Required Monitoring and Maintain Records

48. The paragraphs above are re-alleged and incorporated herein by reference.

49. The Respondent's NPDES Permit, Standard Conditions, Part C.8., Retention of Records, requires, in pertinent part, the Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip charts recordings for continuous monitoring instrumentation, and copies of all reports required by this permit, for a period of at least three years from the date of the sample, measurement, or report.

50. Further, Table 1 “Effluent Pollutant Parameters and Monitoring Frequency” requires the Respondent to monitor and report the flow in MGD each day during a discharge. It also requires total flow to be monitored and reported during the final day of drawdown.

51. Based on the EPA inspection and discussions with WWTF staff during the inspection, flow meters were not operational, and calculated flows were not being taken in lieu of flow meter measurements, and the location of some flow meters was unknown by the WWTF staff.

52. The failure to maintain records consistent with the requirements of the Respondent’s NPDES Permit, as described in the paragraphs above, is a violation of the terms and conditions of Respondent’s NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 6: Failure to Conduct Monthly Lagoon Maintenance Inspections

53. The paragraphs above are re-alleged and incorporated herein by reference.

54. The Respondent’s NPDES Permit, Supplemental Conditions, Part D.1., requires the Respondent to conduct monthly walk around and visual inspections of each lagoon cell for breaches, animal activity, or any conditions that may create damage to the lagoon dikes.

55. According to statements made by WWTF staff during the EPA inspection, the required monthly walk around and visual inspections were not conducted.

56. The failure to conduct monthly visual inspections as described in the paragraphs above, is a violation of the terms and conditions of Respondent’s NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Order for Compliance on Consent

57. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

58. In accordance with this Order, the Respondent shall take all necessary actions to immediately cease any unmonitored and/or unreported discharges, correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all the applicable requirements of its Respondent’s NPDES Permit.

59. *Compliance Plan.* By no later than sixty (60) days after the effective date of this Order, the Respondent shall submit to the EPA, a comprehensive written plan (the “Compliance Plan”) for achieving compliance with the Respondent’s NPDES Permit requirements.

- a. The Compliance Plan shall describe in detail the actions to be taken, including development and implementation of:

1. Standard Operating Procedures (SOP) for monitoring and reporting, including routine schedule for inspecting operations and maintenance to lagoons, and best management practices,
 2. Lagoon system vegetation management plan and schedule,
 3. Plan and schedule to address, by repair or replacement of all failing lagoon aerators,
 4. Plan and schedule to address, by repair or replacement of all failing valves which control inflow, inter lagoon flow and outfalls,
 5. Plan and schedule to conduct a sludge depth survey of the lagoon structures and clean out as recommended, and develop a sludge clean-out schedule,
 6. Plan and schedule to evaluate lagoon capacity, and schedule to address any capacity issues,
 7. Plan and schedule to address algae growth in lagoon cells, and implementation schedule,
 8. SOP and training on proper sampling methods and techniques,
 9. Appoint a position to manage and implement all roles and responsibilities for the wastewater lagoon systems, with clearly defined job descriptions, and
 10. Conduct training for the appointed individual specifically for management of wastewater lagoon systems.
- b. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than September 30, 2026.
- c. The EPA will promptly review, and may provide comments on, the Respondent's Compliance Plan. Immediately upon receipt of the EPA's review and comment, Respondent shall incorporate any comments and commence implementation of its Compliance Plan.

60. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, the Respondent shall submit a written certification to the EPA, that it has completed all actions required pursuant to this Order on Consent and achieved compliance with its Respondent's NPDES Permit.

61. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 71 below or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

62. *Reporting to the EPA:* In addition to the submittals required above, the Respondent shall submit to the EPA, quarterly reports describing the actions the Respondent has taken to comply with the terms of this Order. These reports are due every October 1st, January 1st, April 1st, and July 1st until termination of this Order; the first report is due October 1, 2025. Each report shall include, at a minimum:

- a. Monthly Discharge Monitoring Reports,
- b. Any instance of non-compliance,
- c. Detailed updates on the progress of the compliance measures, including a description of activities completed, those scheduled for the next reporting period, and milestones achieved during the reporting period, and
- d. Any request to extend a deadline of the Compliance Plan must be submitted in writing to the EPA at least 14 days prior to the due date and is subject to denial or approval by the EPA at the EPA's sole discretion.

63. *Submittals.* All documents required to be submitted to the EPA by this Order, including the certification statement below, shall be submitted by electronic mail to:

pollard.angela@epa.gov.

64. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard copy to the address provided below:

Angela Pollard, or successor
U.S. Environmental Protection Agency – Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

65. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

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

67. This Order does not constitute a waiver or a modification of any requirements of the CWA, 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 Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

68. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's WWTF, 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

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

70. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Modification

71. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

72. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

For the Complainant, U.S. Environmental Protection Agency:

Issued this _____ day of _____, 2025.

David Cozad
Director
Enforcement and Compliance Assurance Division

Melissa Bagley
Senior Attorney
Office of Regional Counsel

For the Respondent, Kickapoo Tribe of Kansas:

Paul Cheatham
Signature

9/30/25
Date

Paul Cheatham
Name

Chairperson
Title

