



REGION 10

SEATTLE, WA 98101

RETURN RECEIPT REQUESTED

Mr. Shaun Burgess
Public Works Supervisor
City of Toppenish
21 West 1st Avenue
Toppenish, Washington 98948

Re: **NOTICE OF VIOLATION**
City of Toppenish Wastewater Treatment Plant
NPDES Permit Number WA0026123

Dear Mr. Burgess:

The U.S. Environmental Protection Agency (EPA) appreciates your time and cooperation during EPA's August 24, 2022, Clean Water Act (CWA) inspection of the City of Toppenish Wastewater Treatment Plant ("Facility") and the subsequent conversations your staff had with EPA compliance officer Donna Ortiz. EPA inspected the Facility and reviewed administrative files to assess the Facility's compliance with the requirements of the CWA and the National Pollutant Discharge Elimination System (NPDES) general permit WA0026123 ("Permit").

The Facility is permitted to discharge under the Permit WA0026123, which became effective on July 1, 2013 and has been administratively extended since the expiration date of June 30, 2018.

The purpose of this letter is to notify you of violations EPA has identified following the inspection and file review.

1. Part I.B.1 of the Permit states, in part, "The permittee must comply with effluent limits at all times unless otherwise indicated." EPA reviewed DMRs from September 2019 through September 2024 and identified 34 effluent limit exceedances that constitute 860 violations of the CWA, 33 U.S.C. § 1251 *et seq.* A list of these violations is show in Appendix A. Failures to comply with the effluent limits are violations of part I.B.1 of the Permit.
2. Part II.B.2 of the Permit states: "Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in the most recent version of Requirements for Quality Assurance Project Plans (EPA/QA/R-5) and Guidance for Quality Assurance Project Plans (EPA/QA/G-5). The QAP must be prepared in the format which is specified in these documents."

At the time of the inspection, the inspector noted the Facility's QA Plan was not prepared in the format cited above. The QA plan did not use correct section titles; did not have current laboratory contact information; did not list qualifications and training of employees; and did not have a distribution list.

Part II.B.3.d of the Permit states: "The QA plan must include the "Name(s), address(es) and telephone number(s) of the laboratories used by or proposed to be used by the permittee."

At the time of the inspection, the inspector noted the Facility's QA Plan contained contact information for a previously used contract laboratory but did not contain any information on its current contract laboratory. Failure to have these prescribed elements are violations of Part II.B.3.d of the Permit.

3. Part III.C of the Permit states: "Monitoring must be conducted according to test procedures approved under 40 CFR Part 136...". Table 1 in Part I.B of the Permit identifies parameters that must be monitored, that include in part: 5-day Biochemical Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Ammonia, Nitrate/nitrite, Phosphorus, Alkalinity, Oil/Grease, Total Dissolved Solids (TDS), Total Kjeldahl Nitrogen (TKN) and Whole Effluent Toxicity (WET). 40 CFR Part 136 Table II shows the preservation temperature for these parameters is ≤6°C.

During the inspection, the inspector reviewed chain-of-custody (COC) documents from January 2020 through January 2022. Most of the COC documents reviewed were either missing the temperature upon receipt by the lab or the temperature was more than 6°C, ranging from 8°C to 21°C. Part II.B.2 of the Permit states: "Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in EPA Requirements for Quality Assurance Project Plans (EPA/QA/R-5) and Guidance for Quality Assurance Project Plans (EPA/QA/G-5)." For multiple monitored parameters on multiple dates, the Facility lacked COC documentation. These are violations of Part II.B.2 of the Permit.

COC documentation reviewed shows the sample cooler temperatures exceeded 6°C for the following dates:

January 27, 2021 (TSS, TKN, Nitrate/Nitrite, Oil/Grease, WET @ 14°C);
January 29, 2021 (TDS, TKN, WET @ 17°C);
February 1, 2021 (TDS, Phosphorus, TKN, WET @ 16°C);
March 24, 2021 (TDS, TKN, WET @ 14°C);
March 26, 2021 (TDS, TKN, Nitrate/Nitrite, Alkalinity @ 10°C);
April 7, 2021 (TDS, TKN, WET @ 13°C);
April 9, 2021 (TSS, TKN, WET @ 10°C);
April 12, 2021 (TDS, TKN @ 17°C);
May 11, 2021 (TDS, TKN, WET @ 7°C);
May 13, 2021 (TDS, TKN, WET @ 10°C);
June 3, 2021 (TDS, TKN, Alkalinity, Oil/Grease @ 15°C);
April 8, 2022 (TDS, TKN @ 18°C); and
June 2, 2022 (TDS, TKN, Alkalinity, Oil/Grease @ 17°C).

Failures to conduct monitoring according to test procedures approved under 40 CFR Part 136 are violations of Part III.C of the Permit.

4. Part IV.E of the Permit states: “The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.”

At the time of the inspection, the inspector noted the Facility’s influent screen and heat exchanger were inoperable. This is a violation of Part IV.E of the Permit.

The Facility is requested to respond, in writing, to the findings stated above **within 30 days of receipt of this letter**. Your response should include the causes of the violations and the measures taken to address the current violations and prevent future violations. The request for information in this letter is made under the authority of Section 308 of the CWA, 33 U.S.C. § 1318. In accordance with the provisions of 40 C.F.R. § 2.203(b), you may assert a business confidentiality claim covering part or all the information submitted by clearly identifying it as “confidential.” If no such claim accompanies the information when it is received by the EPA, it may be made available to the public without further notice.

Please send your response letter via email to:

Nicolas Haddad
Compliance Officer
U.S. Environmental Protection Agency
haddad.nicolas@epa.gov

EPA’s [Small Business Resources Information Sheet](#) provides information on compliance assistance that may be helpful to you. For more information about the CWA regulations and requirements, please visit the EPA’s webpage: <https://www.epa.gov/enforcement/water-enforcement>.

Although our goal is to ensure NPDES facilities and projects comply fully with their permits, the ultimate responsibility rests with the permittee. I strongly encourage you to continue your efforts to maintain full knowledge of permit requirements, other appropriate statutes and to respond appropriately to ensure compliance. Notwithstanding your response to this letter, EPA retains all rights to pursue enforcement actions to address these and any other violations.

If you have any questions concerning this matter, please do not hesitate to contact Nicolas Haddad, of my staff, at haddad.nicolas@epa.gov or (206) 553-2140.

Sincerely,

For Jeff KenKnight, Manager
Water Enforcement and Field Branch
Enforcement and Compliance Assurance Division

cc: Mr. Dan Musgrave
Lead Wastewater Treatment Operator, City of Toppenish

Ms. Elizabeth Sanchey
Environmental Management Program Manager, Yakama Nation

Appendix A

Permit Part I.B.1: Effluent Limit Violations

Month	Pollutant	Reported Value	Permit Limit	Unit	Limit Type	Number of Violations
February 2021	Zinc, total recoverable	99.3	50.49	ug/L	Monthly average	28
February 2021	Zinc, total recoverable	120	106	ug/L	Daily max	1
March 2021	Zinc, total recoverable	126	50.49	ug/L	Monthly average	31
March 2021	Zinc, total recoverable	172	106	ug/L	Daily max	1
April 2021	Zinc, total recoverable	101.63	50.49	ug/L	Monthly average	30
April 2021	Zinc, total recoverable	108	106	ug/L	Daily max	1
May 2021	Zinc, total recoverable	104.33	57.4	ug/L	Monthly average	31
June 2021	Zinc, total recoverable	92	57.4	ug/L	Monthly average	30
July 2021	Zinc, total recoverable	68.5	57.4	ug/L	Monthly average	31
August 2021	Zinc, total recoverable	74	57.4	ug/L	Monthly average	31
September 2021	Zinc, total recoverable	72.25	57.4	ug/L	Monthly average	30
October 2021	Zinc, total recoverable	64	50.49	ug/L	Monthly average	31
November 2021	Zinc, total recoverable	67.16	50.49	ug/L	Monthly average	30
December 2021	Zinc, total recoverable	59	50.49	ug/L	Monthly average	31
January 2022	Zinc, total recoverable	61	50.49	ug/L	Monthly average	31
February 2022	Zinc, total recoverable	88	50.49	ug/L	Monthly average	28
March 2022	Zinc, total recoverable	70.5	50.49	ug/L	Monthly average	31
April 2022	Zinc, total recoverable	61	50.49	ug/L	Monthly average	30
May 2022	Zinc, total recoverable	69.6	57.4	ug/L	Monthly average	31

Month	Pollutant	Reported Value	Permit Limit	Unit	Limit Type	Number of Violations
June 2022	Zinc, total recoverable	71.4	57.4	ug/L	Monthly average	30
July 2022	Zinc, total recoverable	64	57.4	ug/L	Monthly average	31
August 2022	Zinc, total recoverable	62	57.4	ug/L	Monthly average	31
November 2022	Zinc, total recoverable	78	50.49	ug/L	Monthly average	30
December 2022	Zinc, total recoverable	75	50.49	ug/L	Monthly average	31
June 2023	Fecal coliform, MPN, EC med, 44.5 C	117.49	100	#/100mL	Monthly geometric mean	30
June 2023	Fecal coliform, MPN, EC med, 44.5 C	243.3	200	#/100mL	Daily max	1
July 2023	Copper, total recoverable	0.2	0.14	lb/d	Monthly average	31
July 2023	Copper, total recoverable	36	9.71	ug/L	Monthly average	31
July 2023	Copper, total recoverable	36	16.3	ug/L	Daily max	1
July 2023	Fecal coliform, MPN, EC med, 44.5 C	182	100	#/100mL	Monthly geometric mean	31
July 2023	Fecal coliform, MPN, EC med, 44.5 C	226.7	200	#/100mL	Daily max	1
July 2023	Solids, suspended percent removal	66.8	85	%	Monthly average mean	31
August 2023	Fecal coliform, MPN, EC med, 44.5 C	173.8	100	#/100mL	Monthly geometric mean	31
October 2023	Nitrogen, ammonia total [as N]	1.4505	1.35	mg/L	Monthly average	31