NPDES PERMIT NO. NM0022101 RESPONSE TO COMMENTS

RECEIVED ON THE SUBJECT DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT IN ACCORDANCE WITH REGULATIONS LISTED AT 40 CFR §124.17

APPLICANT: Village of Taos Ski Valley
P. O. Box 100
Taos Ski Valley, NM 87525

ISSUING OFFICE: U.S. Environmental Protection Agency Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

PREPARED BY: Jim Afghani
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NPDES Permitting and Wetlands Section (6WDPE)
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PERMIT ACTION: Final permit decision and response to comments received on the draft reissued NPDES permit publicly noticed on October 29, 2022.

DATE PREPARED: July 31, 2023

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of March 16, 2023.

SUBSTANTIAL CHANGES FROM DRAFT PERMIT

There are changes from the draft NPDES permit publicly noticed on October 29, 2022:

- The annual average loading limit for nitrogen has been revised to 13.6 lbs/Day and added to the final permit.

STATE CERTIFICATION

In a letter from Shelly Lemon, Acting Bureau Chief, SWQB, to Charles Maguire, Director, Water Division (EPA), dated March 14, 2023, the NMED certified that the discharge would comply with the applicable provisions of Section 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law.

The NMED stated that to meet the requirements of State law, including water quality standards and appropriate basin plans as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent. The State also stated that it reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

CONDITIONS OF CERTIFICATION: There are no conditions of the State certification.

COMMENTS THAT ARE NOT CONDITIONS OF CERTIFICATIONT:

Comment 1 received from NMED:
The EPA Fact Sheet states in Section IV. Effluent Characteristics (p4): "The inspection report containing findings if any is no longer available on the NMED website." NMED requests that EPA correct this information. The NMED inspection reports are available on the NMED-SWQB webpage. Specifically, the NMED inspection report for the Village of Taos Ski Valley Wastewater Treatment Plant (WWTP), NPDES permit number NM0022101, from February 11, 2016, is online.1 Additionally, EPA Region 6 staff performed an inspection of the Village of Taos Ski Valley WWTP on January 20, 2022.

Response 1:
Comment noted for the Record.

Comment 2 received from NMED:
The EPA Fact Sheet is missing a Section V. NMED requests that EPA confirm this a typographical error and not an omission in the fact sheet.

Response 2:
The missing Section V was a typographical error.

Comment 3 received from NMED:
The EPA Fact Sheet states in Section VI. Draft Permit Rationale and Proposed Permit Conditions, Part C. Water Quality Based Limits, Number 5. TMDL Requirements: "Each phase created seasonal total nitrogen limits based on the number of septic systems captured by the permittee and utilized a two to one non-point source/point source trading ratio. According to the applicant, enough septic systems have been captured by permittee to allow for the use of Phase IV total nitrogen limits established by the current permit.

However, the proposed permit will continue to utilize the Phase III seasonal total nitrogen limits established by the current permit. This is because effluent data reported by the permittee on DMRs for the previous year shows the loading and concentrations for total nitrogen are below the Phase III levels as required in the current permit." NMED requests that EPA include the waste load allocation (WLA) from "Total Maximum Daily Load (TMDL) for the Rio Hondo (South Fork of Rio Hondo to Lake Fork Creek)" Table F-3. Seasonal TN WLAs and effluent concentration limitations using a phased approach dependent on the percent septic capture in TSV, specifically the annual WLA of 13.6 lbs/day.

Response 3:
Permit has been revised to require that the annual average for the total nitrogen cannot exceed 13.6 lbs/day as listed in table F-3 in the 2005 TMDL.

Comment 4 received from NMED:
NMED supports the use of the current approved 2005 TMDL for the nutrient WLAs in the Rio Hondo. The TMDL may be updated in the future, but NMED-SWQB has not drafted an update to the TMDL. NMED requests that EPA, per the standard reopener language in the permit, create additional permit conditions if warranted by new or revised TMDLs.

Response 4:
Comment noted for the Record. Part II.C. of the permit addresses the ability to reopen the permit for modifications based on new information such as an updated TMDL.

Comment 5 received from NMED:
NMED requests that EPA include a compliance schedule for Taos Ski Valley WWTP to develop a pollutant minimization plan for addressing nutrients (total nitrogen and total phosphorus) and subsequently implementing a pollutant minimization program for nutrients. The pollutant minimization program will help increase the probability that the nutrient effluent limits will be achieved (e.g., through pollution prevention or treatment) with the planned increase in design flow and discharge.

Response 5:
The following Nutrient Minimization Plan is added:
A requirement to develop a pollutant minimization plan for addressing nutrients (total nitrogen and total phosphorus) and subsequently implementing a pollutant minimization program for nutrients has been added to Part I.B of the permit. The nutrient/ pollutant minimization program will help increase the probability that the nutrient effluent limits will be achieved (e.g., through pollution prevention or treatment) with the planned increase in contributing discharges.

Comment 6 received from NMED:
In Part III- Standard Conditions, Reporting Requirements, Discharge Monitoring Reports, and other Reports, NMED requests that reports be submitted to:
NMED - Surface Water Quality Bureau
Point Source Program Manager
P.O. Box 5469
Santa Fe, NM 87502-5469
psrs.program.manager@env.nm.gov

Response 6:
The address and email have been updated in Part III.

RESPONSE TO PUBLIC COMMENTS:

Comment 1 received from Amigos Bravos:
Loading and Outstanding National Resource Water Designation: Amigos Bravos is pleased to see that the new permit keeps all the previous loading and concentration effluent limits the same as in the previous permit that was issued on August 4, 2017. Yet we are concerned that on page 9 of the factsheet it states that the Permittees requested an increase in loading and the reason given for the loading not being increased in the draft permit is that permit writers did not see the need for an increase. Amigos Bravos would like to draw EPA and NMED's attention to the fact that the receiving stream, the Rio Hondo, was designated by the New Mexico Water Quality Control Commission as an Outstanding National Resource Water on July 11, 2022. While this change to the standards has not yet been officially approved by EPA, it is the state approved water quality standard for the Rio Hondo and therefore, should be referenced in the 401-certification as a reason why loading can't be increased in the Rio Hondo.

Response 1:
20.6.4 NMAC lists the designated uses of Rio Hondo of Waterbody Segment No. 20.6.4.129 of the Rio Grande Basin as domestic water supply, high-quality cold-water aquatic life, irrigation, livestock watering, wildlife habitat, and primary contact. As applied during the draft permit, these attributes are protected by applicable state and federal rules and regulations. In addition, the statement in the fact sheet on page 9 regarding the request to increase loading from the permittee was incorrect. The permittee included the actual design flow of the facility but did not request an increase of allowable pollutant loadings based on the design flow of the facility. Comments on the CWA §401 Certification, which is prepared by the State of New Mexico and not by EPA, are outside the scope of this permitting action.

Comment 2 received from Amigos Bravos:
Proposed Loading vs TMDL Allocation: While we are pleased to see that loading has not increased from previous permits, we have some concerns and questions about this existing loading amount. The 2005 TMDL for the Rio Hondo for Nitrogen lists the total waste load allocation (WLA) as ranging from 11–16.2 lb/day depending on the phase of capture of septic tanks outlined in the TMDL. Amigos Bravos is not aware which phase the treatment plant is currently in, but even if you assume we are in last phase, which has a 16.2 lbs/day WLA, the current and proposed permit far exceeds this with loads as high as 46.6 lbs/day during some times in the year and yearly average of 22.75 lbs/day. Even if you assume that the Village of Taos Ski Valley has been allocated the full growth allocation (GA) of .63 lbs/day in the TMDL, that only gets the WLA to 16.83 lbs/day, which is still far below the 22.75 lbs/day yearly average allowed in the current and draft permit. Please explain how the WLA was calculated.

Response 2:
According to the applicant, the village of Taos Ski Valley is currently in Phase III of capturing the septic systems. There are a total of 111 documented septic systems. Of that, 64 (57.66%) have been tied to the sewer lines. Eleven homes plan to connect soon, and the connection to the remaining 36 residences depends on securing funding to install sewer lines so they can be tied. WLAs and seasonal pollutant limitations were assigned according to the 2005 TMDL for the Rio Hondo (South Fork of Rio Hondo to Lake Fork Creek) available from the New Mexico Environment Department online at https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2019/04/RioHondoTMDL.pdf.

The TMDL includes both a phased annual WLA in Table 5-2. Calculation of Phased Annual TMDL for Total Nitrogen based on percent capture of septic systems in Taos Ski Valley and seasonal WLAs in Table 7-1. Seasonal Waste Load Allocations for the village of Taos Ski Valley (NPDES Permit No. NM0022101), Taos County, New Mexico, and Table 8-1. Seasonal Total Nitrogen Waste Load Allocations for the VTSV if 100% of the septic systems in Taos Ski Valley are converted to the WWTF (Phase V) that operate independently and as applicable are separately reflected in the permit loading limits. Additional information on application of the TMDL and revision of the annual average loading limit for phosphorous in the final permit is addressed in response to NMED comment #3 above. Comments on the TMDL itself are outside the scope of this permitting action.

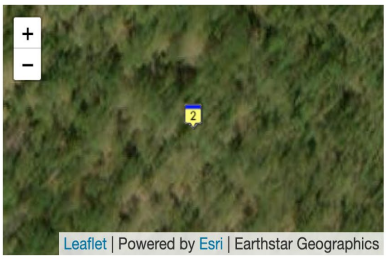
Comment 3 received from Amigos Bravos:
Timing of Loading: The proposed (and current) permit loading timing appears to base on old data similar to what was used in the development of the 2005 TMDL, which used monthly average streamflow from 1934-2002. With climate change we are seeing both earlier spring runoff times as well as less overall runoff. For example, in 2022 the highest flows in the Rio Hondo were observed in March, yet the draft permit uses WLA calculations that appear to be based on data that had the highest runoff periods in May and June. Amigos Bravos requests clarification of how the seasonal variations for WLA were determined for the draft permit and if they were based on old data, that these seasonal variations be calculated using more recent monthly average streamflow data.

Response 3:
EPA understands the NMED plans to review the 2005 TMDL for the RIO Hondo in the near future. The public will be able to review and provide input on a new TMDL, which could address climate change impacts. Please see the 2005 TMDL for the Rio Hondo (South Fork of Rio Hondo to Lake Fork Creek). WLA and seasonal pollutant limitations were assigned according to the currently approved TMDL. See also NMED comment #4 above.

Comment 4 received from Amigos Bravos:
Design Flow: The proposed permit almost doubles the design flow from the previous permit by increasing the design flow from 0.167 MGD to 0.3 MGD, yet the effluent limits and the lbs/day for each pollutant remain the same as the previous permit. Please explain how the with the almost doubling of flow the loading won't be increased. Are there plans to increase treatment so that what is discharged is better quality thus enabling more flow while maintaining the same loading total?

Response 4:
We understand the plant design flow has been increased over time from its original design value of 0.095 MGD to 0.167 MGD and then to 0.3 MGD. However, the wastewater treatment facility continues to discharge the treated wastewater into Rio Hondo at rates below the design flow, as reported on the latest discharge monitoring reports from November 1, 2017, to October 31, 2022. In addition, the 2005 TMDL states that "all calculations in developing this TMDL used a plant design capacity of 0.200 MGD. Consequently, all flow calculations in this TMDL estimate treatment capacity in the future scenario, accommodating projected growth through 2020 (see Section 8.0 in 2005 TMDL). Future projections also indicate that nonpoint sources of nitrogen and phosphorus will likely increase as the village of Taos Ski Valley grows and develops. Therefore, in addition to the projected growth integrated into the TMDL calculations, two percent of the TMDL (nitrogen and phosphorus), or 0.63 lbs/day and 0.06 lbs/day, respectively, will be set aside for a growth allocation (GA) as a placeholder for unknown or future nitrogen and phosphorus sources."

Comment 5 received from Amigos Bravos:
Non-Compliance as Reported on Echo: Amigos Bravos is concerned about the non-compliance status of the facility as reported on EPA's Enforcement and Compliance History Online (ECHO) site. At the detailed facility report page for the Taos Ski Valley (https://echo.epa.gov/detailed-facility-report?fid=110002047197):



TAOS SKI VALLEY, VILLAGE OF
7 FIREHOUSE RD., TAOS SKI VALLEY, NM 87525

FRS ID: 110002047197
EPA Region: 06
Latitude: 36.653372
Longitude: -105.545844
Locational Data Source: NPDES
Industries: --
Indian Country: N

Related Reports
Enforcement Case Report
CWA Pollutant Loading Report
CWA Effluent Charts
EPA Facility Documents
CWA Program Area Reports
CWA Effluent Limit Exceedances Report
View Envirofacts Reports

Enforcement and Compliance Summary

Statute	Compliance Monitoring Activities (5 years)	Date of Last Compliance Monitoring Activity	Compliance Status	Qtrs with NC (of 12)	Qtrs with Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)	EPA Cases (5 years)	Penalties from EPA Cases (5 years)
CWA	2	01/20/2022	Violation Identified	6	4	--	2	$0	--	--

It lists the facility as having non-compliance for 6 out of the last 12 quarters, and significant violation for 4 quarters. From the charts on spreadsheets at this same ECHO link it appears that most of these violations are related to exceedances of the Phosphorus and Nitrogen limits. Amigos Bravos would like clarification about these violations and what, if any, action has been taken to address these reoccurring violations of the permit's nutrient limits. It appears from the ECHO summary that an administrative order was sent to the facility on 8/11/2022 for effluent limit violations. The factsheet language does not adequately summarize the current compliance status of the permit:

"A summary of the last 5-year pollutant data taken from NM0022101 DMRs shows several effluent limit violations from September 2017 to October 2022. In addition, the State inspected the WWTP on November 2, 2016. The inspection report containing findings if any is no longer available on the NMED website." The administrative order should be mentioned in the factsheet and EPA should have access to the inspection conducted by NMED in their files and ideally posted on ECHO and the inspection findings should be summarized in the fact sheet. It is not adequate to state that the inspection report is no longer available on NMED's website, it is EPA's responsibility to track and maintain records regarding compliance with permits that they issue.

Response 5:
The 2016 inspection report containing findings is available on the NMED website at https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2019/10/NM0022101-20160211.pdf . Since enforcement actions regarding non-compliance are outside the scope of this NPDES permitting action, the EPA Region 6 Enforcement and Compliance Assistance Division has been informed of the concerns raised regarding non-compliance status for their further review and response. Note that copies of inspections and enforcement actions for New Mexico are also available on an EPA website: https://www.epa.gov/nm/enforcement-and-compliance-assurance-documents-new-mexico.