

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

IN THE MATTER OF	)	FINDINGS OF VIOLATION
CITY OF BURWELL, NEBRASKA	)	AND ORDER FOR COMPLIANCE
	)	
A Municipality	)	
	)	Docket No. CWA-07-2011-0071
Proceeding under Section 309(a)(3)	)	
of the Clean Water Act,	)	
33 U.S.C. §1319(a)(3)	)	
_____)		

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.
2. The City of Burwell, Nebraska (hereafter "Respondent" or "City") owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.
3. The Nebraska Department of Environmental Quality ("NDEQ") is the agency within the State of Nebraska that has been authorized to administer the federal National Pollutant Discharge Elimination System ("NPDES") program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and its implementing regulations. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

**II. Jurisdiction and Findings of Fact**

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, permits issued under the authority of 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 NPDES permit issued pursuant to that Section.

5. The City is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.
7. The City’s POTW discharges to the North Loup River.
8. The City’s POTW is a “point source” that “discharges pollutants” into “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.
9. Respondent’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
10. On January 1, 2007, the NDEQ issued to the City NPDES Permit No. NE0021172 (hereafter “NPDES permit”) for discharges from its POTW to North Loup River. The NPDES permit expires on December 31, 2011.
11. Part I, Section B of the City’s NPDES permit established permit limitations for Ammonia as Nitrogen for Outfall 001, discharge from the WWTP, including, but not limited to, the following:
  - a. Spring (March through May) – monthly average concentration limitation of 17.06 milligrams per Liter (mg/L);
  - b. Summer (June through October) – monthly average concentration limitation of 7.91 mg/L; and
  - c. Winter (November through February) – monthly average concentration limitation of 30.68 mg/L.
12. Part 1, Section C of the City’s NPDES permit establishes permit limitations for Fecal Coliform Bacteria for Outfall 001, discharged from the WWTP, including the following:
  - a. Seasonal Monitoring (May through September) – Fecal Coliform Colonies monthly geometric mean limitation of 200 colony forming units (“CFU”) per 100 milliliters (“ml”), and daily maximum of 400 CFU per 100 ml.
13. On or about November 2 through 4, 2010, an EPA representative performed an inspection (hereafter “EPA Inspection”) of the City’s wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the inspection was observation of the City’s POTW and review of the City’s Discharge Monitoring Reports (“DMRs”).

14. During the time of the EPA Inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the NPDES permit, observed the WWTP and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations included, but were not limited to instances of noncompliance with NPDES permit limitations for ammonia and Fecal Coliform.

### **III. Findings of Violation**

15. The facts stated in aforementioned Paragraphs 4 through 14 are herein incorporated.
16. Since January 2007, the City exceeded its NPDES permit monthly average concentration limitation for Ammonia as Nitrogen at least 27 times, including violation for the following months:
  - a. March, April, May, July, August, September, and October 2007;
  - b. March, April, May, June, July, September, and October 2008;
  - c. March, April, June, July, September, and October 2009; and
  - d. March, April, May, June, July, August, September, and October 2010.
17. Within the past five years, the City exceeded its monthly geometric mean and daily maximum NPDES permit limitations for Fecal Coliform Bacteria in September 2009, with a sample result of 7,100 CFU per 100 ml on September 8, 2009.
18. Each discharge of pollutants as identified in Paragraphs 16 and 17 above is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the City; and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **III. Order for Compliance**

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

19. *Schedule for Compliance – WWTP and Collection System:* By no later than January 28, 2012, the City shall submit to the EPA, for review and approval, with a copy to the NDEQ, a detailed Schedule for Compliance ("Schedule") with phased and fixed-date action items, as appropriate, for achieving compliance with all applicable final effluent limitations at the WWTP. The Schedule shall ensure that all work performed pursuant to this Section shall be completed as soon as practicable, but **no later than January 1, 2016**. Upon approval, the City shall implement the provisions of the Schedule as a condition of compliance with the Order.

20. The Schedule shall, at a minimum, include a detailed plan and schedule for correction of the deficiencies, installation of equipment and/or construction of new facilities to ensure all discharges from the WWTP comply with the secondary treatment and water quality-based limitations in the City's applicable NPDES permit. The schedule for implementing the proposed modification(s) must include interim milestones to be reported on an annual basis, unless noted otherwise below, and shall in no event exceed the deadlines set forth below:
  - a. By January 28, 2012, Respondent shall submit a detailed Schedule, for review and approval by EPA, as described in Paragraph 19, above;
  - b. By July 28, 2012, Respondent shall submit a facility planning study to determine facility modifications and/or construction needed to achieve compliance with all effluent limitations in its applicable NPDES permit;
  - c. By January 28, 2013, Respondent shall complete and submit to NDEQ for its approval, and to EPA for its review and comment, design specifications for modifications and/or construction to achieve compliance with all effluent limitations in its applicable NPDES permit;
  - d. By January 28, 2013, Respondent shall submit an analysis of the funding necessary to implement the modifications and/or construction proposed, and a detailed and expeditious schedule for obtaining the necessary funding;
  - e. By January 1, 2014, Respondent shall begin construction and/or implementation of the modifications; and
  - f. By January 1, 2016, Respondent shall have completed all constructions or the proposed modifications and shall meet all applicable NPDES permit limitations.
21. The City shall at all times comply with requirements established by the State of Nebraska and the NDEQ regarding repair, construction, and operation of facilities associated with the City's POTW, including but not limited to, any requirements for work to be performed by certified or professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable state requirements.
22. *Reporting to the EPA and the NDEQ:* The City shall submit detailed annual reports and information regarding its compliance with the terms of the Order to the EPA, with a copy to the NDEQ. The first report is due January 28, 2012, with reports due every January 28, thereafter, until termination of this Order pursuant to Paragraph 33 below. The City's annual reports shall include, at a minimum:

- a. submittal of any reports or deliverables, e.g., Schedule, due as of that reporting date;
- b. descriptions of activities completed under this Order and the Schedule, when approved, within the annual reporting period;
- c. descriptions of any other WWTP repairs or upgrades, operation and maintenance activities initiated during the reporting period to achieve compliance with the current NPDES permit limitations; and
- d. the first report shall include a list of key City personnel, including a contact person for purposes of communications regarding this Order.

#### **Approval of the Schedule of Compliance and Incorporation into the Order**

23. Upon receipt, the EPA will review the Schedule from the City pursuant to Paragraphs 19 and 20, and after consultation with the NDEQ, shall approve the Schedule or require modification and resubmission of portion or all of such submittals pursuant to Paragraph 24, below. Upon approval, the Schedule, or resubmitted pursuant to Paragraph 24, below, shall be deemed incorporated into and become enforceable under this Order.

#### **Modification and Resubmission of Plan of Action**

24. If required by the EPA pursuant to Paragraph 23, above, the City shall within forty-five (45) days of receipt of any written comments from the EPA regarding the Schedule, make modifications and changes to it as directed by the EPA, and resubmit the Schedule to the EPA, with a copy to the NDEQ. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

#### **Certification**

25. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

*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 submissions of false information.*

### **Submissions**

26. All documents required to be submitted to the EPA by this Order shall be submitted by mail to:

Robert Bryant  
Environmental Protection Specialist  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

27. All documents required to be submitted to the NDEQ by this Order shall be submitted by mail to:

Mr. Steve Goans  
Permits and Compliance  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
PO Box 98922  
Lincoln, Nebraska 68509-8922.

### **VI. General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

28. 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 correct the violations described above, including but not limited to actions to protect the health or welfare of persons or the environment, or 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.
29. 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 Act, 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 Act for any violation whatsoever.

#### **Access and Requests for Information**

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

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

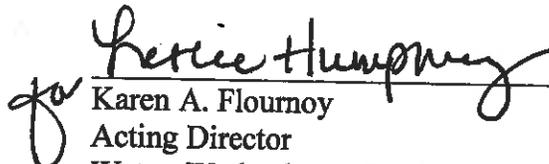
**Effective Date**

32. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

**Termination**

33. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until the requirements of this Order have been met

Issued this 21<sup>st</sup> day of June, 2011.

  
for Karen A. Flourney  
Acting Director  
Water, Wetlands and Pesticides Division

  
Patricia Gillsipie Miller  
Senior Counsel  
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

The Honorable Charles Cone  
Mayor, City of Burwell  
404 Grand Avenue  
Burwell, Nebraska 68823;

and

Pat Rice  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
Lincoln, Nebraska 68509-8922.

6/24/11  
Date

*Sarah A. Moreno*