

5. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

6. The Nebraska Department of Environmental Quality (NDEQ) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated September 17, 1973. Pursuant to Section 402(i) of the CWA, 33 U.S.C. 1342(i), the EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

III. Findings of Fact

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

8. The Respondent owns and operates a publicly owned wastewater treatment works (POTW) which receives and treats wastewater from various domestic and industrial sources.

9. The Respondent’s POTW is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

10. The Respondent’s POTW causes the “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

11. The City’s POTW discharges pollutants into Giles Creek, a tributary of the Elkhorn River. The Elkhorn River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

12. Respondent’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. NDEQ issued a NPDES permit, No. NE-0027910, to the Respondent, effective June 27, 2002, for discharges from its POTW into Giles Creek. The NPDES permit expires June 30, 2007.

14. On June 19-22, 2006, EPA performed an inspection of the Tilden wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). EPA’s inspector documented observations of the operation of City of Tilden’s POTW and performed sampling of the POTW’s discharge. At the conclusion of the inspection, EPA’s inspector left a Notice of Potential Violations with the operator of the POTW. By correspondence dated, June 26, 2006, Respondent provided EPA a response to the Notice of Potential Violations.

IV. Findings of Violation

Failure to Comply with Record Keeping Requirements

15. The Standard Conditions, contained in Appendix A(C)(6) of Respondent's NPDES permit, contains requirements for Monitoring and Reporting Records, which require the following information to be kept for each sampling event:

“Recording of Results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information: (a) the date, exact place, and time of sampling or measurements; (b) the individual(s) who performed the sampling or measurements; (c) the date(s) analyses were performed; (d) the individual(s) who performed the analyses; (e) the analytical techniques or methods used; (f) the results of such analyses; and (g) laboratory data, bench sheets and other required information.”

16. At the time of the June 2006 EPA inspection, Respondent was not recording the information required under its NPDES permit for each sampling event.

17. Respondent's failure to record the required records for each sampling event is a violation of 40 C.F.R. § 122.41(j) and the terms and conditions of Respondent's NPDES permit (Appendix A(C)(6)), and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Effluent Limit Violations

18. Part A of Respondent's permit sets the following limits for discharges from Outfall 001 to Giles Creek, effective upon issuance. Tilden performs once per month sampling which is reported under the monthly average. The permit limits for Outfall 001 include the following:

- a. Carbonaceous Biochemical Oxygen Demand (CBOD) shall be limited to a weekly average of 40 mg/L and a monthly average of 25 mg/L. The mass concentration of CBOD is limited to a weekly average of 23.5 kg/day and a monthly average of 14.7 kg/day.
- b. Total Suspended Solids (TSS) shall be limited to monthly average of 80 mg/L and a maximum of 120 mg/L. The mass concentration of TSS is limited to a monthly average of 46.9 kg/day and a maximum of 120 kg/day.
- c. Ammonia as N shall be limited to a monthly average of 2.12 mg/L and a maximum of 4.61 mg/L between April 1 and October 31. Ammonia as N shall be limited to a monthly average concentration of 1.04 kg/day and a maximum of 2.25

kg/day between April 1 and October 31. Ammonia as N shall be limited to a monthly average of 4.24 mg/L and a maximum of 7.91 mg/L between November 1 and March 31. Ammonia as N shall be limited to a monthly average of 1.97 kg/day and a maximum of 3.67 kg/day between November 1 and March 31.

- d. Between May 1 and September 30, fecal coliform colonies shall be limited to a 30 day average of 200 col/100 ml and a maximum of 400 col/100 ml.

19. A review of records at the POTW revealed that Respondent's discharge exceeded the permitted limitations for Carbonaceous Biochemical Oxygen Demand (CBOD) on the following dates:

- a. May 10, 2005
- b. June 14, 2005
- c. July 12, 2005
- d. September 13, 2005
- e. October 11, 2005.

20. A review of records at the POTW revealed that Respondent's discharge exceeded the permitted limitations for Total Suspended Solids (TSS) on April 15, 2005.

21. A review of records at the POTW revealed that Respondent's discharge exceeded the permitted limitations for Ammonia as Nitrogen on the following dates:

- a. December 7, 2004
- b. January 10, 2005
- c. February 8, 2005
- d. March 9, 2005
- e. April 15, 2005
- f. May 10, 2005
- g. June 14, 2005
- h. September 13, 2005
- i. November 8, 2005
- j. December 6, 2005
- k. June 20-22, 2006.

22. A review of records at the POTW revealed that Respondent's discharge exceeded the permitted limitations for fecal coliform on the following dates:

- a. May 10, 2005
- b. June 14, 2005
- c. July 12, 2005

- d. August 9, 2005
- e. September 13, 2005.

V. Order For Compliance

23. 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 in paragraphs 24 through 28.

24. Within thirty (30) days of receipt of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permit.

25. Within thirty (30) days of receipt of this Order, the Respondent shall submit a written report to EPA and a copy to NDEQ detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

26. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of receipt of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

27. Within thirty (30) days of receipt of this Order, Respondent shall submit the following information to EPA with a copy to NDEQ:

- a. Documentation that BOD monitoring is being performed in accordance with Respondent's NPDES permit; and
- b. Documentation that sampling is representative and in compliance with Respondent's NPDES permit;
- c. A copy of the Discharge Monitoring Reports submitted to NDEQ (a copy need not be sent to NDEQ since NDEQ receives the original).

28. For one year from receipt of this Order, Respondent shall submit to EPA, with a copy to NDEQ, monthly monitoring and sampling information in a quarterly report, due on the following dates:

- b. June 15, 2007
- c. September 15, 2007
- d. December 15, 2007.

Submissions

29. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Cynthia Sans (WWPD-WENF)
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, KS 66101.

30. A copy of documents required to be submitted to NDEQ by this Order, shall be submitted by mail to:

Donna Garten
Wastewater Section
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922.

VI. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

31. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude 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.

32. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 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

33. Nothing in this Order shall limit 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

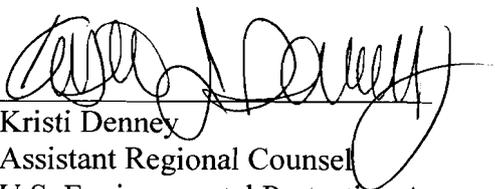
34. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

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

Issued this 17th day of January, 2007.

for 
William A. Spratlin, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101


Kristi Denney
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

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 Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Honorable Steve Rutjens
Mayor, City of Tilden
P.O. Box 301
Tilden, NE 68781;

Patrick Rice, Assistant Director
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922; and

Donna Garten
Wastewater Section
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922.

1/22/07
Date

