

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

08 NOV 18 PM 1:42

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

THE CITY OF PLAINVIEW,
NEBRASKA)

Respondent)

Proceedings under Section 309(a)(3)
of the Clean Water Act,
33 U.S.C. § 1319(a)(3))

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

Docket No. CWA-07-2008-0093

I. PRELIMINARY STATEMENT

1. The following FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE (“Order”) are made and issued pursuant to the authority of 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 United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region VII and further delegated to the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

2. Respondent is the City of Plainview, Nebraska which owns and operates a publicly owned treatment works (“POTW”). The POTW includes a wastewater treatment facility which serves the city of Plainview, Nebraska.

II. STATUTORY AND REGULATORY FRAMEWORK

3. 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 only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

4. 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.

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 CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated June 12, 1974. EPA maintains concurrent enforcement authority with authorized states such as Nebraska for violations of the CWA.

III. FINDINGS OF FACT

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

8. Respondent owns and operates a publicly owned treatment works (“POTW”), as defined by 40 C.F.R. § 403.3(q), which receives and treats wastewater from various domestic and industrial sources.

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

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

11. The POTW discharges pollutants into an unnamed tributary of Dry Creek. The unnamed tributary is a “navigable water” as defined by CWA Section 502(7), 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 granted NPDES Permit No. NE-0021741 (“Permit”) to Respondent, effective August 1, 1999 through December 31, 2003 for discharges from its POTW into Dry Creek. The permit has been administratively extended until a new permit is issued.

14. On April 14-15, 2008, EPA performed an inspection of the Plainview Wastewater Treatment Facility at 537 Avenue and 863 Road in Plainview, Nebraska, under the authority of

Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspection included a visual inspection of all plant unit processes in the POTW and the collection of 24-hour composite samples each day from the wastewater treatment plant effluent.

V. FINDINGS OF VIOLATION

15. The facts stated in paragraphs 7 through 14 above are herein incorporated.

Effluent Limit Violations

16. Part I. C. of Respondent's NPDES permit establishes the winter season 30 day average for ammonia as nitrogen at 2.83 mg/L.

17. The EPA inspection referenced in paragraph 14 above, documented that Respondent had violated the effluent limit violations of Respondent's NPDES permit. A review of the Discharge Monitoring Reports revealed that Respondent's discharge exceeded the effluent limitation for nitrogen as ammonia as follows:

<u>Date</u>	<u>Limit</u>	<u>Reported Value</u>
March 2008	2.83 mg/L	3.03 mg/L

18. Respondent's discharge of ammonia as nitrogen in excess of the permit limit is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections 301(a) and 402 of the CWA, 22 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Failure to Comply with Sampling Procedure Requirements

19. Appendix A(C)1 and A(C)3 of Respondent's NPDES permit state that all sample preservation techniques and sample test procedures shall conform to the methods adopted in NDEQ, Title 121, Chapter 8. Title 121, Chapter 8 adopts by reference 40 CFR Part 136, EPA's sampling and sample preservation methods.

20. The EPA inspection referenced in paragraph 14 above, revealed that proper sample preservation techniques were not being employed by the Respondent. Specifically, Respondent did not properly preserve samples while they were being transported from the POTW to the testing facility. The failure to properly preserve samples in accordance with 40 CFR 136.3 is a violation of Respondent's NPDES permit.

21. The EPA inspection referenced in paragraph 14 above, revealed that pH calibration solutions were expired, in violation of required sample preservation techniques. The failure to replace expired calibration solutions and to continue to use the expired solutions in accordance with sample preservation techniques is a violation of the Respondent's NPDES permit.

22. The EPA inspection referenced in paragraph 14 above, revealed that Respondent's CBOD data from the contract laboratory did not conform to the standard test method. Specifically, the laboratory test procedure did not meet the 2.0 mg/L depletion rate for dissolved oxygen. Respondent's reliance on sampling data not in conformance with the standard test method is a violation of Respondent's NPDES permit.

23. Part II of Respondent's NPDES permit, Influent Limitations and Monitoring Requirements, requires the facility to collect annually a 24-hour composite sample of the influent to calculate percent removal efficiency for CBOD.

24. The EPA inspection referenced in paragraph 14 above, documented a fourteen month gap between composite sample collections. Respondent's failure to collect composite samples annually is a violation of Respondent's NPDES permit.

25. Respondent's failure to comply with sampling procedure requirements is a violation of the terms and conditions of Respondent's NPDES permit, and, as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

Failure to Comply with Record Keeping Requirements

26. Appendix A(C)(6) of Respondent's NPDES permit contains requirements for Monitoring, Reporting, and Record Contents 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 name(s) of 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.”

27. The EPA inspection referenced in paragraph 14 above, documented that the records required for each sampling event were not kept prior to the April 2008 EPA inspection of the

facility. Respondent's failure to document each sampling event is a violation of Respondent's NPDES permit.

28. Appendix A(C)(5) of Respondent's NPDES permit contains requirements for Monitoring and Reporting, Retention of Records, which require the Respondent to retain records of all monitoring activities for a period of at least three years.

29. The EPA inspection referenced in paragraph 14 above, revealed that the Respondent had not been retaining copies of DMRs and noncompliance reports for every month. Respondent's failure to retain records for all monitoring activities for a period of at least three years is a violation of Respondent's NPDES permit.

30. Appendix A(C)5 of Respondent's NPDES permit requires that all calibration and maintenance records be maintained for at least three years.

31. The EPA inspection referenced in paragraph 14 above, revealed that all calibration records were not being maintained by the Respondent for at least three years. Respondent's failure to maintain calibration and maintenance records is a violation of Respondent's NPDES permit.

32. Respondent's failure to record and maintain all required monitoring is a violation of 40 C.F.R. § 122.41(j) and the terms and conditions of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

Failure to Conduct Proper Operation and Maintenance

33. Appendix A(E)1 of Respondent's NPDES permit contains requirements for the proper operation and maintenance of Respondent's POTW. Appendix A(E)1 requires that the Respondent shall, at all times, maintain any facilities or systems control in good working order.

34. The EPA inspection referenced in paragraph 14 above, documented that woody plants were growing in the lagoon system dikes at Respondent's POTW. Roots from woody vegetation can compromise lagoon dikes and cause leakage.

35. Respondent's failure to conduct proper operation and maintenance is a violation of the terms and conditions of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

Failure to Comply with Reporting Requirements

36. Appendix A(D) of Respondent's NPDES permit contains reporting requirements for noncompliance with permit conditions. Respondent's permit requires that Respondent report to the permitting authority within 24 hours by phone and/or within 7 days in writing after becoming aware of noncompliance with permit conditions.

37. The EPA inspection referenced in paragraph 14 above, documented at least seventeen noncompliance events for which proper notification was not made to the permitting authority. Respondent's failure to report noncompliance events is a violation of Respondent's NPDES permit.

38. Appendix A(D)4 of Respondent's NPDES permit requires that the Respondent shall report the monitoring results required by this permit on a Discharge Monitoring Report (DMR) to the permitting authority.

39. The EPA inspection referenced in paragraph 14 above, documented that Respondent's reported DMRs for Dissolved Oxygen between April 2005 and September 2007, were not consistent with the laboratory result of analyses of these samples. Respondent's failure to accurately report monitoring results is a violation of Respondent's NPDES permit.

40. Part I of Respondent's NPDES permit requires daily calculated or metered flow monitoring and that such measurements be recorded in million gallons per day.

41. The EPA inspection referenced in paragraph 14 above, documented that flow measurements recorded prior to August 2007 were measured and reported in gallons per day. Respondent's failure to properly document flow monitoring is a violation of Respondent's NPDES permit.

42. Respondent's failure to comply with reporting requirements required by Respondent's permit is a violation of 40 C.F.R. § 122.41(j) and the terms and conditions of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

VI. ORDER FOR COMPLIANCE

43. 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 44 through 51.

Submissions

44. Within thirty (30) days of the Effective Date, as defined in Paragraph 57 herein, Respondent shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of Respondent's NPDES permit.

45. In the event that Respondent believes complete correction of the violations cited in this Order is not possible within thirty (30) days of the Effective Date, 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. 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. The plan shall be subject to review and approval by EPA. Once approved by EPA, the plan shall be considered a part of this Order.

46. Respondent shall submit to EPA, with a copy to NDEQ, sampling and analysis information of the influent and effluent, bench sheets, removal efficiency calculations, and letterhead data reports from the certified laboratory performing analyses. This information shall be submitted to EPA and NDEQ along with quarterly DMRs on a quarterly schedule: April 28, July 28, October 28, and January 28.

47. All documents required to be submitted to EPA by this Order shall be transmitted by mail to:

Ms. Cynthia Sans
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

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

Mr. Steve Goans, Supervisor
Wastewater Section
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509-8922.

Approval of Submissions and Incorporation into the Order on Consent

49. Upon receipt, EPA will review all documents submitted by Respondent pursuant to Paragraph 44 or 45, and approve such submittals or require modification and resubmittal of a portion or all of the documents pursuant to Paragraph 50, below. Upon approval, documents submitted under Paragraph 44 or 45, above, or resubmitted pursuant to Paragraph 50, below, shall be deemed incorporated into and become enforceable under this Order on Consent.

Modification and Resubmission of Documents

50. If required by EPA pursuant to Paragraph 49, above, Respondent shall, within fifteen (15) days of receipt of any written comments from EPA regarding the documents submitted by Respondent pursuant to this Order on Consent, make modifications and changes to such documents as directed by EPA, and resubmit the documents to EPA. The parties may agree, in writing, to a longer period of time for resubmission of such documents.

Certification

51. All submissions made by Respondent to EPA pursuant to the requirements of this Order on Consent shall contain the following certification signed by an authorized official, as described at 40 CFR 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 submissions of false information.

VII. GENERAL PROVISIONS

Effect of Compliance with the Terms of this Order for Compliance

52. 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.

53. 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 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

54. 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

55. 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.

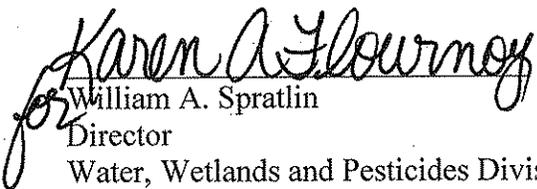
Termination

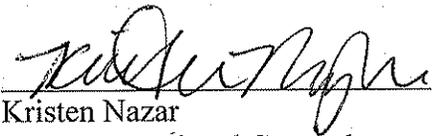
56. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Effective Date

57. The terms of this Order shall be effective and enforceable against Respondent upon the date it is signed by EPA..

Issued this 18th day of November, 2008.


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


Kristen Nazar
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/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 Findings of Violation/Order for Compliance by first class certified mail, return receipt requested, to:

Mr. Tim Kudera
Utility Superintendent, City of Plainview
P.O. Box 757
209 West Locust Street
Plainview, Nebraska 68769-0757

Mr. Steve Goans, Supervisor
Wastewater Section
Nebraska Dept. of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509-8922

NOV 18 2008

Date

