

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
THE CITY OF LEXINGTON,)
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-07-2009-0096

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 7 and further delegated to the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent is the City of Lexington, Nebraska (“the City”) which owns and operates a publicly owned treatment works (“POTW”). The POTW includes a wastewater treatment facility (“WWTF”) which serves the City of Lexington, 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. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), 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, except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342.

5. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.

6. To implement Section 402 of the CWA, 33 U.S.C. § 1342, EPA promulgated regulations codified in 40 C.F.R., including Parts 122 and 136.

7. 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.

8. Section 405(d)(1) of the Act, 33 U.S.C. § 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

9. Pursuant to Section 405(d)(1) of the Act, 33 U.S.C. § 1345(d)(1), EPA promulgated regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Part 503 (the "Sludge Management Program"). These regulations establish recordkeeping and reporting requirements, pollutant limits, and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.

10. Pursuant to 40 C.F.R. § 503.16, the frequency of monitoring for pollutants listed in 40 C.F.R. § 503.13, the pathogen density requirements in 40 C.F.R. § 503.32, and the vector attraction reduction requirements in § 503.33, shall be the frequency listed in Table 1 of 40 C.F.R. § 503.16.

11. The state of Nebraska is not authorized to administer the Sludge Management Program. Therefore, EPA directly implements the Sludge Management Program in Nebraska and remains responsible for enforcement of the requirements of the Sludge Management Program until such time as the state is authorized to administer the Sludge Management Program.

III. FINDINGS OF FACT

12. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
13. Respondent owns and operates a POTW, as defined by 40 C.F.R. § 403.3(q), which receives and treats wastewater from various domestic and industrial sources.
14. The POTW is a "treatment works treating domestic sewage," as defined by 40 C.F.R. § 122.2.
15. The POTW is a Class I Sludge Management Facility as defined by 40 C.F.R. § 501.2 and/or has a design flow rate equal to or greater than one million gallons per day ("mg/d").
16. The POTW is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).
17. The POTW causes the "discharge of pollutants" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).
18. The POTW discharges pollutants into Spring Creek and the Platte River. Spring Creek and the Platte River are "navigable waters" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. 122.2.
19. Respondent's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
20. NDEQ granted NPDES Permit No. NE-0042668 ("Permit") to Respondent, effective October 1, 2004 through September 30, 2009, for discharges from its POTW into the Platte River and the Dawson County Drainage Ditch, flowing into Spring Creek, a tributary of the Platte River. The City's NPDES Permit contains discharge limits for, among other pollutants, Ammonia as Nitrogen ("NH₃"), Whole Effluent Toxicity ("WET"), Carbonaceous Biological Oxygen Demand ("CBOD"), Total Suspended Solids ("TSS"), Oil and Grease, and Fecal Coliform Bacteria.
21. On February 25-28, 2008, EPA performed an inspection of the Respondent's WWTF at 1202 East Walnut Street in Lexington, 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 WWTF effluent.

V. FINDINGS OF VIOLATION

22. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

Effluent Limit Violations

Ammonia as Nitrogen (NH₃)

23. Part III of Respondent's NPDES Permit establishes seasonal daily maximum discharge limits for NH₃ of 21.47 milligrams per liter (mg/l) and 118.81 kilograms per day (kg/d) from November 1 through February 29. Part III of Respondent's NPDES Permit establishes seasonal monthly average discharge limits for NH₃ of 10.7 mg/l and 59.22 kg/d from November 1 through February 29.

24. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the Discharge Monitoring Reports ("DMRs") revealed that Respondent's discharge exceeded the effluent daily maximum and monthly average discharge limitation for NH₃ during January, February, and December 2008.

25. Part III of Respondent's NPDES Permit establishes seasonal daily maximum discharge limits for NH₃ of 8.39 mg/l and 47.56 kg/d from March 1 through May 31. Part III of Respondent's NPDES Permit establishes seasonal monthly average discharge limits for NH₃ of 4.18 mg/l and 23.71 kg/d from March 1 through May 31.

26. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the DMRs revealed that Respondent's discharge exceeded the effluent daily maximum and monthly average discharge limitation for NH₃ during March, April, and May 2008.

27. Part III of Respondent's NPDES Permit establishes seasonal daily maximum discharge limits for NH₃ of 3.65 mg/l and 21.54 kg/d from June 1 through October 31. Part III of Respondent's NPDES Permit establishes seasonal monthly average discharge limits for NH₃ of 1.82 mg/l and 10.74 kg/d from June 1 through October 31.

28. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the DMRs revealed that Respondent's discharge exceeded the effluent daily maximum and monthly average discharge limitation for NH₃ during June, July, and August 2008.

29. Respondent's discharges of NH₃ in excess of permit limits are violations of the terms and conditions of the Respondent's NPDES permit, and as such are violations of

Sections 301(a) and 402 of the CWA, 22 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Whole Effluent Toxicity (WET)

30. Part III of Respondent's NPDES Permit establishes quarterly maximum discharge limitations for WET, *Pimephales Promelas* and *Ceriodaphnia* of 1.64 chronic toxicity units (TUc).

31. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the DMRs revealed that Respondent's discharge exceeded the quarterly maximum discharge limitations for WET during May, August, and November 2008.

32. Part VI, Section E of Respondent's NPDES Permit requires Respondent, upon noncompliance with the toxicity limitations of Respondent's NPDES Permit, to report the noncompliance orally to NDEQ within 24 hours, to take all reasonable measures to reduce toxicity immediately, and to conduct a follow-up test four weeks after the initial noncompliant test results.

33. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the WET effluent limitations of Respondent's NPDES permit and Respondent has neither notified NDEQ of this noncompliance nor conducted the required follow up testing.

34. Respondent's discharges in excess of the permit limit for WET and failures to report non-compliance and conduct a follow-up testing are violations of the terms and conditions of the Respondent's NPDES permit, and as such are violations of Sections 301(a) and 402 of the CWA, 22 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Carbonaceous Biochemical Oxygen Demand (CBOD)

35. Part III of Respondent's NPDES Permit establishes weekly average discharge limits for CBOD of 40 mg/l and 251.75 kg/d. Part III of Respondent's NPDES Permit establishes monthly average discharge limits for CBOD of 25 mg/l and 142.98 kg/d.

36. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the DMRs revealed that Respondent's discharge exceeded the effluent weekly and monthly average discharge limitation for CBOD during May, June, August, September, and October 2008.

37. Respondent's discharges of CBOD in excess of the permit limit are violations of the terms and conditions of the Respondent's NPDES permit, and as such are violations of Sections 301(a) and 402 of the CWA, 22 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Total Suspended Solids (TSS)

38. Part III of Respondent's NPDES Permit establishes weekly average discharge limits for TSS of 45 mg/l and 283.22 kg/d. Part III of Respondent's NPDES Permit establishes monthly average discharge limits for TSS of 30 mg/l and 171.57 kg/d.

39. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the DMRs revealed that Respondent's discharge exceeded the effluent weekly and monthly average discharge limitation for TSS during June, August, and September 2006, December 2007, January, May, June, July, and November 2008.

40. Respondent's discharges of TSS in excess of the permit limit are violations of the terms and conditions of the Respondent's NPDES permit, and as such are violations of Sections 301(a) and 402 of the CWA, 22 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Oil and Grease

41. Part III of Respondent's NPDES Permit establishes weekly average discharge limits for Oil and Grease of 10 mg/l.

42. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the DMRs revealed that Respondent's discharge exceeded the effluent weekly average discharge limitation for oil and grease during January, March, and April 2006, and January and February 2008.

43. Respondent's discharges of oil and grease in excess of the permit limit are violations of the terms and conditions of the Respondent's NPDES permit, and as such are violations of Sections 301(a) and 402 of the CWA, 22 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Fecal Coliform Bacteria

44. Part III of Respondent's NPDES Permit establishes monthly geometric mean discharge limits for fecal coliform bacteria of 200 coliform forming units per 100 milliliters

(CFU/100mL). Part III of Respondent's NPDES Permit establishes a weekly maximum discharge limit for fecal coliform bacteria of 400 CFU/100mL.

45. The EPA inspection referenced in Paragraph 21 above, documented that Respondent had violated the effluent limitations of Respondent's NPDES permit. A review of the DMRs revealed that Respondent's discharge exceeded the effluent weekly average limitation for fecal coliform bacteria during May 2006.

46. Respondent's discharge of fecal coliform bacteria 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 Conduct Biosolids Sampling and to Submit Biosolids Sampling Reports

47. Pursuant to 40 C.F.R. Part 503.18(a), Class I Sludge Management Facilities and facilities which have a design flow rate equal to or greater than one million gallons per day shall conduct sampling and submit the sampling analysis outlined in 40 C.F.R. § 503.17 and 40 C.F.R. § 503.18 to EPA by February 19 of each year.

48. Respondent did not conduct the required sampling nor submit to EPA the required sampling analysis reports for sludge handling and disposal activities in calendar years 2006 and 2007.

49. Respondent's failures to conduct required sampling and submit required sampling analysis reports for sludge handling and disposal activities to EPA is a violation of the regulations promulgated pursuant to Section 405 of the Act, 33 U.S.C. § 1345(d)(1).

VI. ORDER FOR COMPLIANCE

50. 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), and Section 308 of the CWA, 33 U.S.C. § 1318, Respondent is hereby ORDERED to take the actions described below in Paragraphs 51 through 59.

Submissions

51. Within thirty (30) days of the Effective Date, as defined in Paragraph 65 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.

52. 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.

53. Respondent shall submit complete annual reports for sludge handling and disposal activities to the addressee in Paragraph 56 below. The report must include all of the information required by 40 C.F.R. § 503.18(a) and copies of all laboratory analysis, calculations with supporting documentation used to determine agronomic loading rates, and a numeric value (in dry metric tons) of sludge production.

54. Respondent shall submit all information and/or records of communication regarding the effect of Nebraska By-Products, an industrial user of the Respondent's POTW, on the Respondent's POTW, from 2006 until the present. This would include, but not be limited to:

- (i) All information and/or communication regarding the bypassing of Nebraska By-Products' wastewater from the equalization basin and the expanded granular sludge bed (EGSB) towers at Respondent's POTW;
- (ii) All information and/or communication regarding Nebraska By-Products' effluent resulting in the plugging of the POTW's EGSB tower heat exchangers;
- (iii) All information and/or communication regarding heavy grease loadings to the POTW from Nebraska By-Products during 2006; and
- (iv) All information and/or communication regarding heavy grease loadings to the POTW from Nebraska By-Products during late-summer 2007.

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

Mr. Robert Bryant
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North Fifth Street
Kansas City, Kansas 66101.

56. 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

57. Upon receipt, EPA will review all documents submitted by Respondent pursuant to Paragraph 51 through 54, and approve such submittals or require modification and resubmittal of a portion or all of the documents pursuant to Paragraph 58, below. Upon approval, documents submitted under Paragraph 51 through 54, above, or resubmitted pursuant to Paragraph 58, below, shall be deemed incorporated into and become enforceable under this Order.

Modification and Resubmission of Documents

58. If required by EPA pursuant to Paragraph 57, 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, 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

59. All submissions made by Respondent to EPA pursuant to the requirements of this Order 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

60. 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.

61. 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. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 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 CWA for any violation whatsoever.

Access and Requests for Information

62. 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

63. 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.

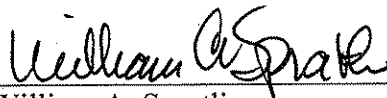
Termination

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

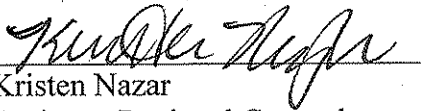
Effective Date

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

Issued this 23rd day of July, 2009.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101



Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
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:

The Honorable John Fagot
Mayor, City of Lexington
P.O. Box 70
406 East 7th Street
Lexington, Nebraska 68850

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

7/29/09

Date

Ulrich A. Zaragza