

UNITED STATES ENVIRONMENTAL AGENCY  
REGION VII  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: ) Docket No. CWA-07-2002-0164  
)  
Village of Thurston, Nebraska ) Finding of Violation and  
Respondent ) Order for Compliance  
)  
Proceedings under Sections 308(a) and )  
309(a)(3) of the Clean Water Act, )  
33 U.S.C. §§ 1318(a) and 1319(a)(3) )

STATUTORY AUTHORITY

1. The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Sections 308(a) and 309(a)(3) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a) and 1319(a)(3), which authority has been delegated by the Administrator to the Regional Administrator of EPA, Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division.

FINDINGS

2. The Village of Thurston, Nebraska ("Respondent") is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. §1362(5).
3. Respondent owns and operates a wastewater treatment lagoon facility to treat domestic waste collected from the Village of Thurston, Nebraska. The wastewater treatment lagoon has been a non-discharging facility and is not authorized to discharge pollutants to the waters of the United States pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
4. The Village or Thurston and the wastewater treatment lagoon facility it operates are located within Winnebago Tribal Reservation. Pursuant to 40 C.F.R. § 123.1, the authority to issue National Pollutant Discharge Elimination System (NPDES) permits under Section 402 of the Act, 33 U.S.C. § 1342, for facilities on Indian lands resides with EPA if a State or Tribal authority does not seek or have authority under the Act to regulate activities on Indian lands.
5. The State of Nebraska lacks authority under the Clean Water Act to regulate activities on Indian lands.
6. To date, the Winnebago Indian Tribe has not sought authority to regulate activities under the Clean Water Act.

7. In a phone conversation, on or about March 28, 2002, the Honorable Donald Zila, Mayor of the Village of Thurston, Nebraska, informed EPA that the Village's treatment lagoon had reached its capacity and is now discharging on a continuing basis to a local creek, identified as Middle Creek. In addition, Mr. Zila indicated that no flow measurements or analytical testing of the lagoon effluent has been conducted.

8. Middle Creek is a tributary of Logan Creek Dredge leading to the Platte and Missouri rivers, both of which are "navigable waters" and "water of the United States" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and its implementing regulations.

9. The discharge of the contents of the wastewater treatment lagoon as described in paragraph 3 above is a "discharge of pollutants" as defined in Section 502(12) of the Act, 33 U.S.C. § 1362(12).

10. Pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a), the discharge of pollutants by any person is unlawful, except, *inter alia*, as authorized by a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

11. Respondent has violated the requirements of Section 301(a) of the Act, 33 U.S.C. § 1311(a), by discharging wastewater from Respondent's wastewater treatment lagoons without an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

#### ORDER FOR COMPLIANCE

Based on the above Findings and pursuant to the authority of Sections 308(a) and 309(a)(3) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a) (3), **it is hereby Ordered:**

12. Respondent shall within thirty (30) days from receipt of this Order begin conducting sampling and analysis of the effluent from the Respondent's wastewater treatment facility for the pollutant parameters listed in Table 1, below, as follows:

- a. Samples shall be collected using the measurement frequency and sample type identified for each pollutant listed in Table 1.
- b. All samples shall be collected at a location immediately following the last treatment unit of the wastewater treatment system and before the effluent mixes with the receiving water.
- c. Analyses of each sample shall be conducted in accordance with the techniques prescribed in 40 CFR Part 136, and amendment thereto.

**TABLE 1  
 EFFLUENT PARAMETERS AND MONITORING FREQUENCY**

<b>Effluent Parameter</b>	<b>Effluent Limitation</b>	<b>Measurement Frequency</b>	<b>Sample Type</b>
Effluent Flow	Monitor only	Daily	Flow meter
Oil and Grease Total	Monitor only	Once per quarter	Grab
pH- Standard Units	6.0 - 9.0 Standard Units	Once per month	Grab
Five Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	Weekly Average - mg/L 45	Once per month	Grab
	Monthly Average - mg/L 30		
Total Suspended Solids (TSS)	Weekly Average - mg/L 120	Once per month	Grab
	Monthly Average - mg/L 80		
Dissolved Oxygen	5.0 mg/L	Once per month	Grab
Fecal Coliform	Monthly Average Colonies/100m/I - 200	Once per month (Apr thru Nov)	Grab
	Weekly Average Colonies/100m/I - 400	Once per month (Apr thru Nov)	
Nitrogen, Ammonia Total as N	determine limit based upon pH - mg/L	Once per month	Grab

13. Respondent shall immediately notify EPA if the effluent from the treatment lagoon exceeds an average weekly value for BOD<sub>5</sub> of 45 mg/l and an average weekly value for TSS of 120 mg/l. ( See paragraph 17)

14. Respondent shall comply with the Standard Conditions set forth in Attachment A to the Order.

15. Within sixty (60) days of receipt of this Order, Respondent shall complete and submit to EPA the NPDES permit application appended to this Order as Attachment B. The completed NPDES permit application shall contain all the appropriate data and information required by Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Parts 122 and 123. Respondent may contact Harold Owens at (913) 551- 7371 for additional information regarding completion of the NPDES permit application.

16. The Respondent shall submit quarterly a Discharge Monitoring Report (DMR) to EPA Region VII, as described in Section D of the Standards Conditions appended to this Order as Attachment A, as follows:

- a. Each DMR submittal shall include the monitoring results obtained on the effluent parameters in Table 1 above.
- b. The initial quarterly reporting period shall begin July 1, 2002 and end September 30, 2002. Each consecutive three month period thereafter shall constitute a reporting period.
- c. Monitoring reports shall be submitted on or before the 28th day of January, April, July, and October. DMR reporting forms are included as Attachment C to this Order.
- d. In the event no discharge occurs during the quarter, written notification is still required and will consist of an entry of "NO DISCHARGE DURING THIS REPORTING PERIOD" on the DMR.

17. All documents required to be submitted to EPA under this Order, shall be sent to:

Ms. Mary Tietjen Mindrup  
NPDES & Facilities Management Branch  
Water Wetlands and Pesticides Division  
EPA Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

#### EFFECT OF ORDER

18. The provisions of this Order are severable. If any portion of this Order is determined to be unenforceable, the remaining provisions shall remain in full force and effect.

19. This Order does not constitute a waiver of a modification of any requirement of the 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 Section 309 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to

take any additional injunctive action or to forego any civil or criminal action to seek penalties, fines or other appropriate relief under the act for any violations, whatsoever.

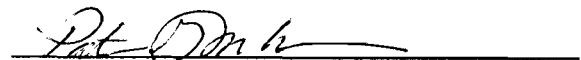
20. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

21. This order shall become effective upon the day of receipt by Respondent.

Dated this 3<sup>rd</sup> Day of July, 2002



Leo Alderman, Director  
Water, Wetland and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII



Patricia Gillispie Miller  
Senior Assistant Regional Counsel

- Attachments: A. Standard Conditions for Compliance - Publicly Owned Treatment Works  
B. NPDES Form 2A Application Overview  
C. Discharge Monitoring Report (DMR) Forms

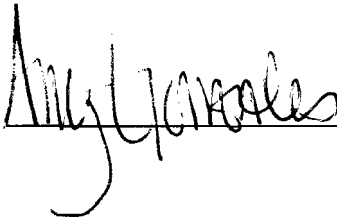
CERTIFICATE OF SERVICE

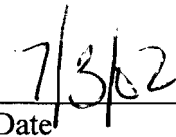
I certify that on the date noted below I filed the original and one true and correct copy of the signed final Finding of Violation and Order for Compliance with the Regional Hearing Clerk, EPA Region VII. I further certify that I sent by mail, return receipt requested, a true and correct copy of the original Findings of Violation and Order for Compliance, together with cover letter and small business assistance information, to the following:

Mr. Donald Zila, Mayor  
Village of Thurston, Nebraska  
Box 215  
Thurston, NE 68062

Mr. John Blackhawk, Chairman  
Winnebago Tribe of Nebraska  
P.O. Box 687  
Winnebago, Nebraska 68071

Patrick W. Rice, Assistant Director  
Nebraska Department of Environmental Quality  
1200 N. Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509

  
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Date \_\_\_\_\_