

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH 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 VILLAGE OF THURSTON) Docket No. CWA-07-2010-0048
WASTEWATER TREATMENT FACILITY)
)
Respondent) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act, 33 U.S.C.)
§ 1319(a)(3))
_____)

I. PRELIMINARY STATEMENT

1. The following FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE (“Order”) are made and 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”), 33 U.S.C. § 1319(a)(3), and Section 308, 33 U.S.C. § 1318, which authority has been delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division.

2. Respondent is the Village of Thurston Wastewater Treatment Facility, who owns and operates a Wastewater Treatment Facility (“WWTF”) for the Village of Thurston, 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. EPA is the federal agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

5. The Village of Thurston WWTF (hereinafter “Respondent”), a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), owns and operates a WWTF for the Village of Thurston, Nebraska.

6. The Village of Thurston WWTF is a "point source" that discharges "pollutants" to Middle Creek, which is a "navigable water," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*

7. 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.

III. FINDINGS OF FACT

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

9. 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.

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

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

12. The POTW discharges pollutants into Middle Creek. Middle Creek is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

14. On or about October 15, 2006, NPDES Permit No. NE0031739 was issued to Respondent by EPA pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit will expire on October 14, 2011.

15. On or about May 18-20, 2009, EPA personnel conducted an inspection (the EPA inspection) of Respondent's WWTF to determine Respondent's compliance with its NPDES permit and the CWA, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

IV. FINDINGS OF VIOLATION

16. The facts stated in Paragraphs 7 through 15 above are herein incorporated.

Illegal Discharge Location

17. Part I. B of Respondent's NPDES permit authorizes discharges from the outfalls specifically designated as discharge locations. Discharge to any location not authorized under an NPDES permit is a violation of the CWA.

18. Respondent's NPDES Permit authorizes a discharge from Outfall 001, which discharges to Middle Creek.

19. The EPA inspection referenced in Paragraph 15 above, revealed that Respondent's discharge has been piped across the field through drain tile to a distant location for discharge. This discharge location is not an outfall specifically authorized for discharge under Respondent's permit.

20. Respondent's discharge from the location set forth in Paragraph 19 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, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Failure to Adhere to Compliance Schedule

21. Part I. F of Respondent's NPDES permit requires the Respondent to construct an acceptable effluent measuring structure within six months from the effective date of Respondent's NPDES Permit and to report construction progress within Respondent's regular quarterly discharge monitoring reports (DMR) to EPA.

22. The EPA inspection referenced in Paragraph 15 above, documented that Respondent failed to take any steps toward the installation of an effluent monitoring structure, in violation of Respondent's compliance schedule. No progress reports were submitted to EPA.

23. Respondent's failure to adhere to its compliance schedule and to submit progress reports to EPA 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, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Failure to Conduct Proper Operation and Maintenance

24. Part I. D of Respondent's NPDES permit requires the Respondent to maintain the facility to ensure the integrity of the components of the treatment system. Attachment I, Part B of Respondent's NPDES permit requires the Respondent to properly operate and maintain all facility and systems of treatment and control (and related appurtenances) that are installed or used by Respondent to achieve compliance with the conditions of Respondent's NPDES permit.

25. The EPA inspection referenced in Paragraph 15 above, documented that

Respondent failed to conduct proper operation and maintenance of Respondent's WWTF. Specifically, animal burrows, particularly muskrat damage, threatened the integrity of Respondent's wastewater treatment facility, vegetation was growing within Respondent's lagoon system, and the influent manhole was full of debris and partially clogged.

26. Respondent's failure to conduct proper operation and maintenance 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, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Failure to Comply with Reporting Requirements

27. Attachment I, Part D of Respondent's NPDES permit requires the Respondent to notify EPA as soon as possible of any planned physical alteration or additions to Respondent's facility when the alteration or addition may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. Section 122.29(b).

28. The EPA inspection referenced in Paragraph 15 above, documented that Respondent has receive a USDA grant for the future construction of a new WWTF. Respondent failed to notify EPA of the planned construction of a potential new source, as required by Section 40 C.F.R. Section 122.29(b).

29. Attachment I, Part D of Respondent's NPDES permit requires the Respondent to dispose of sludge generated at its wastewater treatment plant in accordance with 40 C.F.R. Part 503. The regulations found at 40 C.F.R. Part 503 require the development of a Sludge Management Plan.

30. The EPA inspection referenced in Paragraph 15 above, documented that Respondent failed to develop a Sludge Management Plan regarding the disposal of sludge, in violation of the requirements of 40 C.F.R. Part 503.

31. Respondent's failure to notify EPA and develop a Sludge Management Plan 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, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Failure to Comply with Sampling and Recordkeeping Requirements

32. Part I, C of Respondent's NPDES permit requires Respondent to collect four grab samples at least two weeks prior to a scheduled draw down discharge.

33. The EPA inspection referenced in Paragraph 15 above, documented that Respondent failed to conduct any pre-discharge sampling since at least 2006.

34. Part I. C, Table 2 of Respondent's NPDES permit requires the Respondent to conduct influent monitoring. Attachment I, Standard Conditions, Part C, Monitoring and Records, Section 8, Retention of Records, requires the Respondent to maintain records of all monitoring information for a period of at least three years from the date of the sample.

35. The EPA inspection referenced in Paragraph 15 above, documented that Respondent failed to conduct influent monitoring and to maintain records on site for a minimum of three years from the date of the sample since at least 2006.

36 Part I. C of Respondent's NPDES permit requires Respondent to submit quarterly DMRs to EPA. In the event no discharge occurs during the quarter, written notification that no discharge has occurred during the quarter shall be submitted to EPA on a quarterly DMR.

37. The EPA inspection referenced in Paragraph 15 above, revealed all DMRs submitted by Respondent to EPA stated that no discharge occurred from July 30, 2007, to March 31, 2009, a period where discharges were occurring from Respondent's facility.

38. The EPA inspection referenced in Paragraph 15 above, revealed that Respondent has failed to submit quarterly DMRs to EPA since April 2009.

39. Respondent's failure to comply with sampling and recordkeeping requirements 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, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

40. Respondent's NPDES permit violations, as identified in Paragraphs 17 through 39, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

V. Order for Compliance

41. 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, 33 U.S.C. § 1318, Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

42. Immediately upon receipt of this Order, Respondent shall comply with its NPDES permit and the CWA. This shall include, but not be limited to, the following:

- a) immediately cease illegal discharges and apply for permit modification for change in outfall location;
- b) conduct influent monitoring, effluent monitoring, pre-discharge sampling, and submit timely DMRs and other required submissions to EPA pursuant to Respondent's NPDES permit and conditions outlined in 40 C.F.R. Part 136;

- c) maintenance of the integrity of the WWTF lagoon, including mowing, maintenance, and quarterly measurements of the freeboard and wastewater depth of the lagoon; and
 - d) construction and operation of an effluent flow monitoring system, and reporting all planned significant alteration or construction to the WWTF to EPA.
43. Within sixty (60) days of receipt of this Order, Respondent shall submit:
- 1. A Sludge Management Plan according to 40 CFR 503 regulations for EPA review and approval.
 - 2. A lagoon closure plan for EPA review and approval.
 - 3. Facility plans for planned WWTP construction.
 - 4. A copy of the permit application to the State of Nebraska for the construction permit and a copy of the construction permit, if issued.
 - 5. A written report to EPA describing the specific actions previously taken to correct the violations cited herein, and an explanation of why such actions are anticipated to be sufficient to prevent future recurrence of the cited violations.
44. All reports and notifications herein required shall be submitted to:

Kimberly Willis
Compliance Officer
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

45. *Certification.* Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contain the following certification:

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 violations.

VI. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

46. Compliance with the terms of this Order for Compliance shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

47. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable federal laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

48. 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 Section 309 of the CWA, 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 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

49. 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

50. 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.

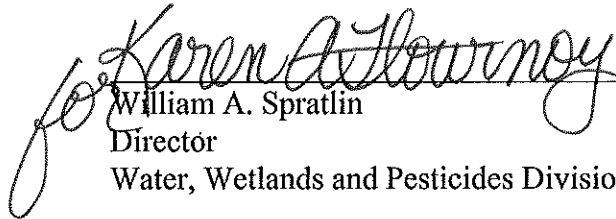
Effective Date

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

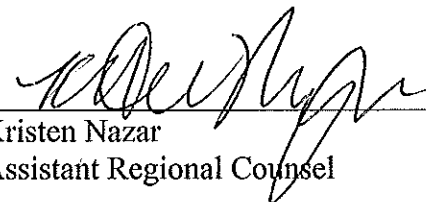
Termination

52. 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.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Kristen Nazar
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Mr. Donald Zila
Chairman
Village of Thurston, Nebraska
P.O. Box 215
Thurston, Nebraska 68062.

With a copy to:

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

MAY 21 2010

Date

