

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Oakland, Nebraska)
)
A Municipality)
)
Docket No. CWA-07-2009-0039
Proceedings under Section 309(a) (3)
of the Clean Water Act,)
33 U.S.C. 1319(a) (3))
)

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE (“Order”) is 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), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent, the city of Oakland, Nebraska (hereafter “Respondent” or “Oakland”), operates a Publicly Owned Treatment Works (POTW) in the State of Nebraska that treats domestic, commercial, and industrial wastewater.

3. 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 (“MOU”). EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

II. Jurisdiction and Finding of Fact

4. 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.

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

6. Oakland owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources.

7. Oakland's POTW discharges to Logan Creek, a tributary of the Elkhorn River.

8. The POTW is a "point source" that "discharges pollutants" into "navigable waters" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

10. On June 25, 1997, NDEQ granted NPDES permit No. NE0024023 (hereafter "NPDES permit"), to the Respondent for discharges from the Oakland POTW to Logan Creek, a tributary of the Elkhorn River, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of June 24, 2002. The NPDES permit has been administratively extended pursuant to Title 119, Chapter 24, Section 010 of the Nebraska Administrative Code.

11. Part I, Section A of Respondent's NPDES permit sets thirty-day average and seven-day average effluent limitations for Total Suspended Solids (TSS) and Carbonaceous Biochemical Oxygen Demand (CBOD) and requires monitoring for these parameters at least once per month. For TSS, the thirty-day average limitation is 30 mg/L and the seven-day average limitation is 45 mg/L. For CBOD, the thirty-day average limitation is 25 mg/L and the seven-day average limitation is 40 mg/L.

12. Appendix A, Section C.5 of Respondent's NPDES permit requires the Respondent to retain records of all monitoring activities, including reports required by the permit, for a period of at least three years.

13. Appendix A, Section D.3 of Respondent's NPDES permit requires the Respondent to submit a written noncompliance report to the NDEQ within seven days of becoming aware of noncompliance with effluent limitations for conventional pollutants, including TSS, as set forth in Respondent's permit.

14. On April 21 through April 24, 2008, EPA performed an inspection of the Oakland POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "Inspection"). During the Inspection, the EPA inspector observed the operation of the POTW, performed sampling of the POTW's discharge, and documented his findings regarding Oakland's compliance with its NPDES permit and the CWA. The EPA inspection report states that the POTW is hydraulically overloaded, as it was designed for an average daily flow of 150,000 gallons per day (gpd) but receives an average daily flow of 175,000 gpd.

III. Findings of Violation

15. Paragraphs 4 through 14 are incorporated by reference as if fully set forth herein.

16. A review of Respondent's Discharge Monitoring Reports (DMRs) revealed that Respondent's discharge exceeded the permitted effluent limitations for TSS as follows:

<u>Month</u>	<u>Limit</u>	<u>Reported Value</u>
October 2007	30 mg/L thirty-day average	38 mg/L
December 2007	30 mg/L thirty-day average	33 mg/L
September 2008	30 mg/L thirty-day average	111 mg/L
September 2008	45 mg/L seven-day average	111 mg/L
December 2008	30 mg/L thirty-day average	258 mg/L
December 2008	45 mg/L seven-day average	258 mg/L

17. According to Respondent's DMRs, the exceedances of TSS in October 2007 and December 2007, as summarized in Paragraph 16, were measured from samples obtained on October 24, 2007, and December 5, 2007, respectively. Respondent reported on the same DMRs that the flow through the POTW on these sampling dates was 0.177 million gallons per day (mgd) on October 24, 2007, and 0.170 mgd on December 5, 2007. Both of these measured flows exceed the POTW's average daily design flow of 0.150 mgd.

18. During the EPA inspection identified in Paragraph 14, Respondent provided EPA a February 2008 "Wastewater Treatment Facility Evaluation" conducted for the City of Oakland by JEO Consulting Group. The report states that "Excess flow [through the POTW] can most likely be attributed to inflow and infiltration."

19. A review of Respondent's DMRs revealed that Respondent's discharge exceeded the permitted effluent limitations for CBOD as follows:

<u>Month</u>	<u>Limit</u>	<u>Reported Value</u>
September 2008	25 mg/L thirty-day average	26 mg/L
December 2008	25 mg/L thirty-day average	125 mg/L
December 2008	40 mg/L seven-day average	125 mg/L

20. Based on observations and review of Respondent's records by the EPA inspector, Respondent failed to retain a copy of DMRs for April and May of 2006 and the annual sludge monitoring report for 2006.

21. Based on observations and review of Respondent's records by the EPA inspector, Respondent failed to submit a written noncompliance report to the NDEQ within seven days of becoming aware of a TSS exceedance in October 2007.

22. Respondent's discharge of pollutants in excess of permit limits, failure to retain copies of monitoring records, and failure to submit a written noncompliance report 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.

IV. 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.

24. Within thirty (30) calendar days of receipt of this Order, Respondent shall describe in writing to EPA interim measures to be taken 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. Unless EPA provides additional comments to Respondent's Interim Measures plan, Respondent shall perform such interim measures until such time as the Compliance Plan required by paragraph 26, below, can be developed, approved by EPA, and implemented by Respondent.

25. For one year from the effective date of this Order, Respondent shall submit monthly DMRs to EPA on a quarterly basis. The reports shall be submitted no later than the 28th day of the month following the end of the calendar quarter (e.g., January 28, April 28, July 28 and October 28). Respondent shall continue to submit DMRs to NDEQ in accordance with Respondent's NPDES permit.

26. Within sixty (60) calendar days of receipt of this Order, Respondent shall provide EPA a proposed Compliance Plan, for EPA's review and approval, which shall describe in detail how Respondent intends to eliminate future violations of its NPDES permit. At a minimum, the proposed Compliance Plan shall include:

- a. A description of modifications Respondent proposes to undertake at the POTW to eliminate effluent violations;
- b. A description of activities Respondent proposes to conduct to eliminate known and suspected causes of inflow and infiltration into Respondent's collection system;
- b. A schedule for implementation of the proposed action(s); and
- c. Submission of cost information relating to any proposed action(s).

EPA Review and Approval of Required Submittals

27. EPA will review all proposed submittals requiring EPA approval (Interim Measures Plan and Compliance Plan), and notify Respondent in writing of EPA's approval, disapproval, or modification of the submittal, or any part thereof. Within thirty (30) days of receipt of EPA's

comments pertaining to any submittal, Respondent shall amend such submittal, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submittal, it may modify and approve the same in accordance with its comments. In the event of such modification, EPA will notify Respondent of the modification(s). Upon receipt of EPA's approval or notice of modification(s), Respondent shall commence work and implement any approved submittal in accordance with the schedule and provisions contained therein. EPA approved submittals shall be deemed incorporated into and enforceable as part of this Order.

28. With each submittal to EPA pursuant to the requirements of this Order, the Respondent shall include a written statement signed by a principal executive officer or ranking elected official, or by a duly authorized representative of that person, that contains 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.

Submissions

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

Michael Boeglin
Water Enforcement Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

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

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

V. 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 correct the violations described above, including but not limited to actions to protect the health or welfare of persons or the environment, or 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 CWA, 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(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 the 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

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. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Order.

Termination

36. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the 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

Issued this 2nd day of July, 2009.


William A. Spratlin, Director
Water, Wetlands and Pesticides Division


Chris Muehlberger
Assistant Regional Counsel

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 Peter Kruse
Mayor of Oakland
401 North Oakland Avenue
Oakland, Nebraska 68045-1134

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

7/7/09
Date

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