

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
City of Atkinson, Nebraska) Docket No. CWA-07-2020-0083
)
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE ON
) CONSENT
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order on Consent”) are made and issued pursuant to 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 U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division.
2. Respondent is the city of Atkinson, Nebraska (“Respondent” or “the City”) and was at all relevant times a municipality organized under the laws of the state of Nebraska.
3. EPA, together with the Respondent, enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
4. It is the Parties’ intent through entering into this Order on Consent to address Respondent’s alleged noncompliance with the CWA and violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.
5. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also

waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. 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, which provides that pollutants may be discharged in accordance with the terms of a NPDES permit issued pursuant to that Section.

7. 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.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States,” which in turn has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

9. To implement Section 402 of the CWA, the 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.

10. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works (“POTW”) includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

11. The Nebraska Department of Environment and Energy (“NDEE”) is the state agency in Nebraska with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations. EPA retains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA’s General Allegations

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

13. Respondent is the owner and/or operator of a POTW in Atkinson, Nebraska, that includes a sewage collection system, which receives wastewater from various domestic and non-domestic sources, and a wastewater treatment facility (“WWTF”).

14. The WWTF discharges through an outfall into a channel that is directly adjacent to, and that flows into, the Elkhorn river (“Outfall 001”). The Elkhorn river is a “water of the United

States” and, therefore, a “navigable water” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15. The Elkhorn river is impaired by *E. coli*, for which a Total Maximum Daily Load (TMDL) was placed and approved in May 2012.

16. The WWTF is a “point source” that “discharges pollutants” to “navigable waters” of the United States, as these terms are defined by Section 502(14), (12) and (7) of the CWA, 33 U.S.C. § 1362(14), (12) and (7), respectively.

17. On October 1, 2015, the NDEE reissued NPDES permit number NE0021610 to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“2015 NPDES Permit”), effective until September 30, 2020. The WWTF’s 2015 NPDES Permit and previous permits have each authorized discharges from the WWTF to a channel that flows directly into the Elkhorn River subject to conditions and limitations set forth in the Permit(s).

18. Respondent’s 2015 NPDES Permit, and previous permits, each have contained requirements to monitor influent (including flow), numeric effluent limits, narrative limits, reporting, and requirements for proper operation and maintenance of the WWTF.

Compliance and Facility History

19. In 2004, EPA and the City entered into an Administrative Order for Compliance (“AOC”) on Consent to resolve violations of the City’s NPDES permit. The violations cited in the 2004 Order included the City’s failure to comply with the permit’s sampling procedure requirements for recording and reporting sample results, record keeping requirements, and the sludge management requirements.

20. The 2004 Order directed the City to provide “a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.” Following termination of the 2004 Order, the City’s WWTF continued to report repeated violations of the numeric limits for the effective NPDES permit.

21. In April 2014, the state of Nebraska conducted a compliance inspection of the City’s WWTF and documented numerous violations of the then effective NPDES permit. Based on Nebraska’s April 2014 inspection of the City’s WWTF, on August 12, 2014, the state of Nebraska issued the City a notice of violation for the City’s violations of its NPDES permit. The violations cited included violations of the Permit’s numeric limits, failure to comply with the reporting requirements of the permit, failure to comply with operation and maintenance requirements of the permit, discharge of visible solids in the final effluent, and failure to exercise “reasonable care” in the operation of the WWTF.

22. The City’s WWTF previously consisted of a mechanical plant (primary clarifier, aerator and secondary clarifier). The WWTF was upgraded in 2015 and now consists of a screening building, equalization tank, two sequenced batch reactors (“SBR”) activated sludge

aeration basins, and an ultraviolet (“UV”) disinfection channel. The WWTF’s new system discharges on an intermittent basis. The 2015 NPDES Permit was issued after the completion of the 2015 upgrade. Following the completion of the WWTF upgrade and issuance of the 2015 Permit, the WWTF continued to experience repeated violations of the 2015 Permit.

23. On October 22 - 25, 2018, EPA performed a Compliance Sampling Inspection of the City’s WWTF (“2018 Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Prior to the 2018 Inspection, EPA’s inspector reviewed the NDEE file for the WWTF and found that the City failed to submit DMRs as required from January through September 2015 (9 months), and from April through December 2016 (9 months). During the 2018 Inspection, the EPA inspector reviewed and collected copies of records relating to compliance with the 2015 Permit, observed the City’s POTW, including the collection system, WWTF, and discharge location, and collected influent and effluent samples.

24. At the conclusion of the 2018 Inspection, the EPA inspector provided the City a Notice of Potential Violation (“NOPV”), which summarized the inspector’s preliminary observations regarding potential violations, including, but not limited to, the City’s failure to meet the 2015 Permit’s effluent limits, the failure to properly manage sludges from the WWTF, and the failure to perform operational maintenance. A copy of the Inspection Report was sent to the City and the NDEE on or about December 27, 2018.

25. On or about April 10, 2019, EPA issued Respondent a Request for Information (“2019 Request for Information”), pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a) to obtain additional information to determine the WWTF’s compliance with the CWA. The 2019 Request for Information required Respondent to submit operational information and effluent monitoring data for March, April and May 2019. The City provide a partial response in August 2019. To date, the City has not fully provided EPA the information required by the 2019 Request for Information.

26. On or about June 18, 2019, the NDEE conducted a permit assistance visit to Respondent’s WWTF. During this visit, the NDEE representative observed that Outfall 001 was discharging with unrestricted flow, and the discharge had excessive turbidity and turbulence, resulting in the UV disinfection having inadequate contact time.

EPA’s Findings

Count 1

Failure to Comply with Effluent Limitations

27. The facts stated above are re-alleged and incorporated herein by reference.

28. Part I of Respondent’s NPDES 2015 Permit establishes discharge limits and monitoring requirements for Outfall 001, including seasonal monthly average and daily maximum limits for ammonia as set forth in Part 1.B of the Permit, monthly average and maximums for total suspended solids and biological oxygen demand in Part 1 of the Permit, and

monthly and maximum geometric mean limits for *E. coli*, for the recreation season from May through September, in Part 1.C of the Permit.

29. Based on a review of available information, the EPA finds that in 24 months from January 2015 to October 2019, the City violated the numeric effluent limitations for Outfall 001 set forth in its NPDES Permit thirty times. These violations include the following:

- a. Ammonia: Exceedances in October 2015, July 2016, September 2017, October 2017, February 2018, November 2018, December 2018, October 2019;
- b. Total Suspended Solids: March 2016, April 2016, May 2016, June 2016, February 2017, December 2017, and February 2018, April 2019, May 2019, June 2019;
- c. Biological Oxygen Demand (carbonaceous): June 2019; and
- d. *E. coli*: June 2016, May 2017, July 2017, September 2017, October 2017, July 2018, August 2018, September 2018, April 2019, May 2019, July 2019.

30. Each failure to comply with effluent limitations is a violation of the terms and conditions of Respondent's 2015 NPDES permit and, as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2 **Failure to Comply with Narrative Limits**

31. The facts stated above are re-alleged and incorporated herein by reference.

32. Part IV.B.2 of the 2015 Permit requires that discharges shall not contain pollutants at concentrations or levels that produce objectionable films, colors, turbidity, deposits, or noxious odors in the receiving stream or waterway.

33. During the EPA 2018 Inspection and the NDEE 2019 Inspection, visible discharges of solids from Outfall 001 into the Elkhorn River were observed. The discharges were excessively turbid and the inspectors observed solids deposition within the channel that flows directly into the Elkhorn River. These observed conditions were violations of Part IV.B.2 of the 2015 Permit.

34. The failure to comply with narrative limits is a violation of the terms and conditions of Respondent's NPDES 2015 Permit and, as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Count 3 **Failure to properly sample and maintain records**

35. The facts stated above are re-alleged and incorporated herein by reference.

36. Part II of the WWTF's previous permit and the current 2015 NPDES Permit requires influent wastewater to be monitored for flow at the head-works of the WWTF.

37. Standard Condition 19.e of the WWTF's previous permit and the current 2015 NPDES requires representative sampling, including, in subpart iv, that flow measurement devices be calibrated and maintained to insure the accuracy of the measurements. In addition, Standard Condition 12 of the WWTF's previous permit and the current 2015 NPDES requires that the permittee retain records of all monitoring information, including calibration records for a period of three (3) years.

38. During the EPA 2018 Inspection, facility personnel stated that the influent flow meter of the WWTF had not been calibrated since installation in 2014. Without calibration of the flow meter, the accuracy of the City's reported measurements to determine compliance with the Permit's "mass" limits for BOD, TSS and ammonia could not be verified.

39. During the EPA 2018 Inspection, facility personnel stated that calibration records for the pH and Dissolved Oxygen (DO) meters were not maintained.

40. During the EPA 2018 Inspection, EPA found that the City had failed to maintain monitoring and calibration records for a minimum of three years.

41. Respondent's failure to calibrate the flow meter and retain monitoring and calibration records are each a violation of the terms and conditions of Respondent's NPDES Permits and, as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to properly operate maintain the WWTF

42. Standard Condition 6 of the WWTF's previous permits and the current 2015 NPDES Permit (Duty to Mitigate) states the City shall take "all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment."

43. Standard Condition 7 of the WWTF's previous permit and the current 2015 NPDES Permit (Operation and Maintenance) states the City "shall properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective performance based on designed facility removals, effective management, adequate operator staffing and training, adequate process controls, adequate funding that reflects proper user fee schedules, adequate laboratory controls and appropriate quality assurance procedures."

44. During EPA's 2018 Inspection, EPA reviewed the design documents for the 2015 upgrade to the WWTF which stated that the designed holding capacity of sludge holding tanks is approximately 195 days of total sludge storage under normal conditions. During the 2018 Inspection, EPA was told by the City that the last removal and application of sludges from the WWTF had occurred on February 14, 2014, or more than 1,000 days. During this period, solids that should have been captured as "sludge" were discharged without control and contrary to the WWTF's proper design and operational requirements.

45. During EPA's 2018 Inspection, the City stated that WWTF had problems with the UV bulbs breaking and getting too hot. EPA also documented that the underlining suspended solids issue limited the effectiveness of the UV system to disinfect discharges from the WWTF.

46. During the 2019 NDEE inspection, the NDEE inspector observed that the WWTF was being operated with the discharge outfall "wide open," resulting in the UV system having inadequate contact time to disinfect bacteria in the WWTF's discharge.

47. Respondent's failure to properly capture and remove sludges from the WWTF, and to properly operate the WWTF to allow disinfection of discharges by the UV system, are each a violation of the terms and conditions of Respondent's NPDES Permits and, as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance on Consent

48. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

49. In accordance with this Order, the Respondent shall immediately cease all discharges, except discharges in compliance with its NPDES Permit, and shall take all necessary actions 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.

50. *WWTF Assessment/Evaluation.* By no later than sixty (60) days after the effective date of this Order, the City shall retain the services of a qualified engineer or wastewater specialist to assist the City in identifying and addressing any needed infrastructure, operational and management changes for the WWTF, operator training, or other activities necessary for the WWTF to achieve compliance with the City's Permit. The information and issues to be considered during this assessment shall include, but are not limited to:

- a. The review of all of effluent sampling and WWTF operational data generated during the pendency of the 2015 Permit;
- b. An assessment/evaluation of the WWTF to ensure all equipment and facilities are in good repair and functioning appropriately, operational controls are efficient and effective, the Operations and Maintenance Manual is current and being implemented, and operator training is sufficient to achieve compliance with the 2015 NPDES Permit's requirements;
- c. An assessment/evaluation of whether the frequent violations of the 2015 Permit's effluent limits and narrative limits have been caused by improper operation/maintenance of the WWTF, receipt of industrial wastewater from Significant or Categorical Industrial Users, and/or hydraulic overloading and/or other cause(s);
- d. An assessment/evaluation of whether biosolid sludges were discharged from the WWTF during the pendency of the 2015 Permit on dates when compliance sampling occurred;

- e. The identification of the believed causes of Respondent's violations of the 2015 Permit identified in this Order; and
- f. The identification of necessary corrective measures to achieve compliance with the 2015 Permit.

51. *Compliance Plan.* By no later than ninety (90) days after the effective date of this Order, the City shall submit to the EPA, with a copy to the NDEE, a comprehensive written plan (the "Compliance Plan") for achieving compliance with the City's 2015 NPDES Permit no later than eighteen (18) months after the effective date of this Order.

- a. For the purpose of providing a basis to evaluate the proposed Compliance Plan, The proposed Plan shall provide a copy of all effluent monitoring data, and operational data for the operation of the WWTF from January 1, 2019 to the date of submission of the Plan;
- b. The Compliance Plan shall provide a copy of the completed WWTF Assessment/Evaluation;
- c. The Compliance Plan shall describe in detail the proposed actions to be taken or work to be completed, and how such actions or work will enable the City to achieve compliance with the 2015 NPDES Permit;
- d. The Compliance Plan shall include a proposed sequential milestone schedule for completing any proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than eighteen (18) months after the effective date of this Order; and
- e. The EPA will promptly review, and may provide comments on, the City's proposed Compliance Plan.

52. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action in the Compliance Plan, the City shall submit a written certification to the EPA, with a copy to the NDEE, that it has completed all actions required pursuant to this Order on Consent and achieved compliance with its 2015 NPDES Permit.

53. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 64 below or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

54. *Semi-annual Reports.* In addition to the submittals required by Paragraphs 51 and 52 above, the City shall submit to EPA, with a copy to the NDEE, semi-annual reports describing the actions the City has taken to comply with the terms of this Order, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period, any operator training completed, monthly discharge monitoring reports for the period, and notification of any noncompliance with the Permit during the specified period.

These reports are due every January 1st and July 1st until termination of this Order pursuant to Paragraph 65, below.

55. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 58 below, shall be submitted by electronic mail to:

Mark Aaron, or his designated successor
U.S. Environmental Protection Agency – Region 7
Enforcement and Compliance Assurance Division
Water Branch
11201 Renner Boulevard
Lenexa, Kansas 66219
Aaron.mark@epa.gov

56. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

57. All documents required to be submitted pursuant to this Order shall also be submitted by mail to the NDEE to the address or email provided below:

Reuel Anderson
Water Permits Division
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Raul.Anderson@nebraska.gov

58. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 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 violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

59. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

60. 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 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

61. Nothing in this Order shall limit the 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

62. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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

63. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Modification

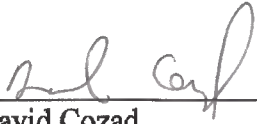
64. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

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

For the Complainant, U.S. Environmental Protection Agency:

Issued this 21st day of February, 2020.

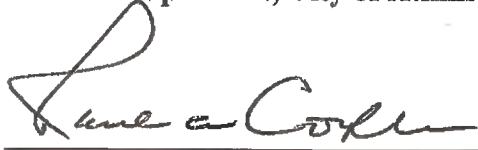


David Cozad
Director
Enforcement and Compliance Assurance Division



Howard Bunch
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, City of Atkinson, Nebraska:


Signature

February 12, 2020
Date

Paul A. Corkle
Name

Mayor
Title

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 on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Paul Corkle
Mayor of Atkinson
104 South Main Street
P. O. Box 519
Atkinson, Nebraska 68713

and via first class mail to:

Reuel Anderson
Water Management Division
Nebraska Department of Environment and Energy
P. O. Box 98922
Lincoln, Nebraska 68509-8922

2/24/2020
Date

[Signature]
Signature