

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2018-0031
David City, Nebraska)	
)	AMENDED
)	FINDINGS OF VIOLATION AND
Respondent)	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 United States Environmental Protection Agency (“EPA”) and David City, Nebraska (“City” or “Respondent”) entered into a Findings of Violation and Order for Compliance on Consent on May 4, 2018. The following findings and Order are an amendment to the above-referenced matter.

2. The following Amended Findings of Violation and Administrative Order for Compliance on Consent (“Amended 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 EPA to the Regional Administrator, EPA, Region 7 and further delegated to the Director of the Enforcement and Compliance Assurance Division.

3. By entering into this Amended 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) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (4) 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 Amended 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 Amended Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

4. Paragraphs 2 – 47 of the May 4, 2018 Order are incorporated by reference in this Amended Order on Consent.

EPA’s Amended General Allegations

5. On November 1, 2017, the NDEE issued a modified NPDES permit number NE0021199 to the City authorizing discharges from its POTW to Keysor Creek pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“2017 NPDES Permit”).

6. Part I of the 2017 NPDES Permit contains discharge limitations and monitoring requirements for discharges of effluent from the City’s POTW through Outfall 1 to Keysor Creek, some of which are summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	Weekly Average	
Biochemical Oxygen Demand (“BOD”)	mg/L	30.0	45.0	Monthly
Total Suspended Solids (“TSS”)	mg/L	80.0	120.0	Monthly
		Monthly Average	Daily Maximum	
Interim Spring Ammonia (March 1 – May 31)	mg/L	4.13	8.28	Monthly
	kg/day	5.47	10.97	
Interim Summer Ammonia (June 1 – Oct. 31)	mg/L	4.05	8.12	Monthly
	kg/day	5.36	10.75	
Interim Winter Ammonia (Nov. 1 – Feb. 28)	mg/L	7.81	15.7	Monthly
	kg/day	10.03	20.13	
Final Spring Ammonia (March 1 – May 31)	mg/L	0.45	0.90	Monthly
	kg/day	0.47	0.94	
Final Summer Ammonia (June 1 – Oct. 31)	mg/L	0.35	0.69	Monthly
	kg/day	0.41	0.83	
Final Winter Ammonia (Nov. 1 – Feb. 28 [29])	mg/L	2.20	4.40	Monthly
	kg/day	2.23	4.47	

7. On July 1, 2021, the NDEE issued a revised NPDES permit number NE0021199 to the City authorizing discharges from its POTW to Keysor Creek pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“2021 NPDES Permit”).

8. Part I of the 2021 NPDES Permit contains revised discharge limitations and monitoring requirements for discharges of effluent from the City’s POTW through Outfall 1 to Keysor Creek, some of which are summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	Daily Maximum	
Total Suspended Solids (“TSS”)	mg/L	80.0	120.0	Twice/Month

		Monthly Average	Weekly Average	
Biochemical Oxygen Demand (“BOD”)	mg/L	30.0	45.0	Twice/Month
		Monthly Average	Daily Maximum	
Spring Ammonia (March 1 – May 31)	mg/L	0.37	0.74	Twice/Month
	kg/day	0.64	1.29	
Summer Ammonia (June 1 – Oct. 31)	mg/L	0.30	0.60	Twice/Month
	kg/day	0.50	1.00	
Winter Ammonia (Nov. 1 – Feb. 28)	mg/L	1.08	2.17	Twice/Month
	kg/day	1.61	3.22	

9. The NDEE conducted inspections of the City’s POTW on September 17, 2020 and May 27, 2021, and documented violations of the City’s NPDES Permit, including in particular, multiple exceedances of the ammonia discharge limits in the 2017 NPDES Permit and 2021 NPDES Permit that occurred in 2019, 2020, and 2021, and the City’s ongoing efforts to address the violations.

10. The May 4, 2018, Order addressed noncompliance with the City’s NPDES Permit from 2014 through 2017 and required that the City take all necessary actions to correct the deficiencies and complete the actions proposed in the Compliance Plan to achieve compliance with its NPDES Permit by December 31, 2020. Based on the City’s semi-annual reports submitted to the EPA and the City’s Discharge Monitoring Reports, although the City has completed most of the work proposed in the original Compliance Plan, it has not yet achieved compliance with the CWA and its NPDES Permit.

11. On April 26, 2021, the City submitted an updated Compliance Plan to EPA.

12. On July 19, 2021, the EPA requested that the City revise and resubmit the updated Compliance Plan, finding it lacked detail and a proposed schedule for certain projects.

13. On September 3, 2021, the City submitted additional information to EPA and on April 8, 2022, the City submitted a Comprehensive Compliance Plan Update to EPA regarding the City’s plans to upgrade the headworks building at the wastewater treatment plant and investigate the need for repairs to the south side of its collection system, as well as information about certain completed projects.

14. On August 12, 2022, NDEE conducted a compliance assistance visit to the David City WWTP and received new updates regarding revised plans for proposed WWTP upgrades.

15. On October 31, 2022, the City submitted a report to EPA of progress in implementing the Comprehensive Compliance Plan Update and new information concerning the POTW’s industrial users, including that the Henningsen Foods egg processing facility closed and Ag Processing, Inc (AGP) plans to open a soybean processing facility in David City in 2025. The report indicated that the City now plans to construct additional upgrades to the WWTP and to implement sewer system lining repairs in the south side of the collection system.

16. Because of the change in circumstances with the City's industrial users, new information concerning the need for additional upgrades to the WWTP, and the additional time needed to complete the upgrades, the Comprehensive Compliance Plan Update is no longer adequate to achieve compliance with the City's NPDES Permit and CWA.

EPA's Findings of Violations

Amended Count 1 Failure to Comply with Effluent Limitations

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

18. Part I of the Respondent's 2017 and 2021 NPDES permits establish discharge limits and monitoring requirements for Outfall 001, as described in Paragraphs 6 and 8, above.

19. The City's POTW effluent discharged through Outfall 001 exceeded the ammonia, BOD, and TSS limits of its NPDES permit on multiple occasions from 2019 to 2022 including, but not limited to, the following:

- a. Nitrogen, ammonia total, concentration (mg/L):
 - i. Daily max: October 2020; February, March, April, May, June, July, August, September, October, November, and December 2021; January, February, March, April, May, June, and July 2022;
 - ii. Monthly average: August and October 2019; October and November 2020; February, March, April, May, June, July, August, September, October, November, and December 2021; January, February, March, May, and June 2022.
- b. Nitrogen, ammonia total, loading (kg/d):
 - i. Daily max: July and October 2019; October and November 2020; February, March, April, May, June, July, August, September, October, November, and December 2021; January, February, May, and June 2022;
 - ii. Monthly average: July and October 2019; November 2020; February, March, April, May, June, July, August, September, October, November, and December 2021; January, February, March, and May 2022.
- c. BOD, 5-day, 20 deg. C, concentration (mg/L)
 - i. Weekly average: July 2021
 - ii. Monthly average: July and August 2021; February and March 2022;
- d. Total Suspended Solids, concentration (mg/L)
 - i. Daily Max: July 2021;
 - ii. Monthly average: July 2021.

20. Each failure to comply with effluent limitations is a violation of the terms and conditions of 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), 1342(p).

Amended Order for Compliance on Consent

21. 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.

22. Despite the City's efforts to implement the original Compliance Plan, it has not achieved compliance with its NPDES Permit by the deadline in the May 4, 2018 Order.

23. Amendments to the Comprehensive Compliance Plan Update are now needed to achieve compliance. Accordingly, the EPA and the City agree to modify the May 4, 2018 Order to require the City to implement an Amended Comprehensive Compliance Plan Update, described below, for achieving compliance with the City's NPDES Permit by July 31, 2025.

24. *Amended Comprehensive Compliance Plan Update.* By no later than sixty (60) days after the effective date of this Amended Order, the City shall submit to the EPA, with a copy to the NDEE, a comprehensive written plan (the "Amended Comprehensive Compliance Plan Update") for achieving compliance with the City's NPDES Permit, as follows:

- a. The Amended Comprehensive Compliance Plan Update shall describe in detail the actions to be taken or work to be completed, and how such actions or work will enable the City to achieve compliance with the effluent limitations prescribed by the City's NPDES Permit.
- b. The Amended Comprehensive Compliance Plan Update shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than July 31, 2025.

25. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, 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 Amended Order on Consent and achieved compliance with its NPDES Permit.

26. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Amended Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Amended Order on Consent pursuant to the provisions of Paragraph 36 below, or terminate this Amended Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

27. *Submittals.* All documents required to be submitted to EPA by this Amended Order on Consent, including the certification statement in Paragraph 30 below, shall be submitted by electronic mail to:

draper.seth@epa.gov

Seth Draper, or his successor
U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

28. 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.

29. All documents required to be submitted pursuant to this Amended Order shall also be submitted by electronic mail to NDEE to the address provided below:

kara.valentine@nebraska.gov
Kara Valentine, or her successor
Water Quality Division
Nebraska Department of Environment and Energy

30. Each submission requirement of this Amended 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 Amended Order for Compliance

31. Compliance with the terms of this Amended 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.

32. This Amended 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 Amended Order. Issuance of this Amended 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 Amended 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

34. If any provision or authority of this Amended Order, or the application of this Amended Order to Respondent, is held by federal judiciary authority to be invalid, the application to Respondent of the remainder of this Amended Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

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

Modification

36. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Amended 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 Amended Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

37. This Amended 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:

David Cozad
Director
Enforcement and Compliance Assurance Division

Shane E. C. McCain
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, David City:

Signature Alan Zavodny

Date 12-7-2022

Name Alan Zavodny

Title Mayor

CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered a true and correct copy of this Amended Findings of Violation and Administrative Order for Compliance on Consent by electronic mail to:

Regional Hearing Clerk:

R7_Hearing_Clerk_Filings@epa.gov

For Respondent:

The Honorable Alan Zavodny
Mayor of David City, Nebraska
alan1@northstarservices.net

David Levy, Attorney
Baird Holm LLP
dlevy@bairdholm.com

For Complainant, U.S. Environmental Protection Agency Region 7:

Shane McCoin
EPA Region 7 Office of Regional Counsel
mccoin.shane@epa.gov

Seth Draper
EPA Region 7 Enforcement and Compliance Assurance Division
draper.seth@epa.gov

For Nebraska Department of Environment and Energy:

Kara Valentine
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