

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF ) Docket No. CWA-07-2008-0021  
)  
THE CITY OF WISNER, NEBRASKA )  
)  
Respondent ) FINDINGS OF VIOLATION  
) AND 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 FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE 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 Wisner, Nebraska (hereafter "Respondent" or "City"), operates a Publicly Owned Treatment Works ("POTW") in the State of Nebraska that treats domestic and industrial wastewater.

3. The Nebraska Department of Environmental Quality ("NDEQ") is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program in Missouri pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding. The 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 Wisner is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. The City of Wisner owns and operates a POTW (hereafter "the POTW") that receives and treats wastewater from various domestic and commercial sources.

7. The City's POTW discharges to 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 City'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 January 28, 2005, NDEQ granted NPDES permit No. NE0023957 (hereafter "NPDES permit"), to the Respondent for discharges from the POTW to the Elkhorn River, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of January 31, 2010.
11. Part I, Section A. of Respondent's NPDES permit sets monthly average and seven-day average effluent limitations for five-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>) and Total Suspended Solids (TSS), and requires monitoring for these parameters at least once per month. The monthly average limitations for CBOD<sub>5</sub> are 25.0 milligrams per liter (mg/L) and 19.2 kilograms per day (kg/day), and the seven (7)-day average limitations for CBOD<sub>5</sub> are 40.0 mg/L and 30.8 kg/day. The monthly average limitations for TSS are 30.0 mg/L and 23.1 kg/day, and the seven (7)-day average limitations for TSS are 45.0 mg/L and 34.7 kg/day.
12. Appendix A, Section D.2. of Respondent's NPDES permit requires the City to conform to the methods adopted in NDEQ Title 119, Chapter 27, which incorporates by reference the conditions and requirements of 40 CFR Part 136 pertaining to the Guidelines Establishing Test Procedures for the Analysis of Pollutants. Table II in 40 CFR § 136.3 requires that samples collected for analysis of CBOD<sub>5</sub> and TSS be chilled to 6° C or below, unless analyzed immediately.
13. Appendix A, Section E.1. of Respondent's NPDES permit requires the City to, at all times, maintain in good working order and operate as efficiently as possible, any facilities or systems of control installed by the permittee in order to achieve compliance with the terms and conditions of the permit.
14. On April 23 through 26, 2007, the EPA performed an inspection of the City of Wisner wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a)(hereafter "EPA's inspection").
15. During the Inspection, the EPA inspector observed the operation of the City of Wisner's POTW, performed sampling of the POTW's discharge, and documented his findings regarding the City's compliance with its NPDES permit and the CWA, as follows:

- (a) Based on a review of the City's discharge monitoring reports (DMRs), the City's POTW exceeded the Permit limitations for CBOD<sub>5</sub> and TSS as follows:
- June 2005 – CBOD<sub>5</sub> monthly average and seven (7)-day average in mg/L and kg/day
- August 2005 – CBOD<sub>5</sub> monthly average and seven (7)-day average in mg/L and kg/day
- January 2006 – CBOD<sub>5</sub> monthly average in mg/L and monthly average and seven (7)-day average in mg/L and kg/day; TSS monthly average in mg/L
- February 2006 – CBOD<sub>5</sub> monthly average in mg/L and monthly average and seven (7)-day average in mg/L and kg/day; TSS monthly average in mg/L
- March 2006 – CBOD<sub>5</sub> monthly average and seven (7)-day average in mg/L and kg/day; TSS monthly average and seven (7)-day average in mg/L and kg/day
- (b) Based on the analysis of samples collected by the EPA inspector, the City's POTW exceeded the seven (7)-day average limitations of the Permit for TSS mg/L and kg/day from April 23 through 26, 2007, and the monthly average limitations of the Permit for TSS mg/l and kg/day in April 2007.
- (c) Based on observations and review of the City's records by the EPA inspector, the City was not properly chilling samples of CBOD<sub>5</sub> and TSS as required by Appendix A, Section D.2. of the City's Permit, NDEQ Title 119, Chapter 27, and 40 CFR Part 136.
- (d) Based on observations and review of the City's records by the EPA inspector, the flow through the City's POTW exceeds design capacity in severe storm events, such as approximately two inches in a twenty-four hour period, and that the average flow to the POTW is generally forty percent greater than expected for the population of the City of Wisner. The City reports it has approximately fourteen miles of vitreous clay pipe.

### **III. Findings of Violation**

16. Respondent violated its NPDES permit by failing to comply with the effluent limitations for CBOD<sub>5</sub> and TSS during the time periods identified in Paragraph 15, subparagraphs (a) and (b), above.

17. Respondent violated its NPDES permit by failing to properly preserve samples of CBOD<sub>5</sub> and TSS as described in Paragraph 15, subparagraph (c), above.

18. Respondent violated its NPDES permit by failing to properly operate and maintain all facilities and systems of control to achieve compliance with the conditions of the permit, including but not limited to ensuring the wastewater flows to the POTW do not exceed the design capacity of the system.

19. The City's violations of the requirements of its NPDES Permit, as identified in Paragraphs 16 through 18 above, constitute violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

#### **IV. Order for Compliance**

20. 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.

21. Immediately upon the Effective Date of this Order, Respondent shall take whatever action are necessary 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.

22. Within thirty (30) days of the Effective Date of this Order, Respondent shall submit information to EPA, with a copy to NDEQ, as follows:

- (a) an explanation of actions taken and/or plans for action to be taken to correct the violations cited herein;
- (b) an explanation of processes and procedures developed, revised and implemented to prevent future violations and ensure compliance with the Permit requirements; and
- (c) a description of actions the Respondent has taken and/or plans to take to identify the cause(s) of high flow at the WWTP and to reduce the high flows and their impact on the WWTP, including but not limited to, collection system inspection, operation, maintenance, and repair activities, sludge storage and handling practices, and temporary retention of flows from storm surges until plant capacity allows treatment.

23. After review of the information submitted by Respondent pursuant to Paragraph 22, above, EPA may determine that additional information is needed and/or additional corrective measure are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

24. For one year from the effective date of this Order, Respondent shall submit to EPA on a quarterly basis, monthly discharge monitoring reports. The reports shall be submitted no later than the 28<sup>th</sup> day of the month following the end of the calendar quarter (e.g., January 28, April 28, July 28 and October 28).

25. 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 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.*

#### **Submissions**

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

Berla Johnson  
Water Enforcement Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency - Region VII  
901 North Fifth Street  
Kansas City, KS 66101

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

Steve Goans  
NPDES Compliance Coordinator Unit Supervisor  
Lincoln Office, The Atrium  
1200 N. Street, Suite 400  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922

#### **V. General Provisions**

##### **Effect of Compliance with the Terms of this Order for Compliance**

28. 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 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.

29. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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(b), (c), (d), or (g) of the Act, 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 Act for any violation whatsoever.

#### **Access and Requests for Information**

30. 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**

31. 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**

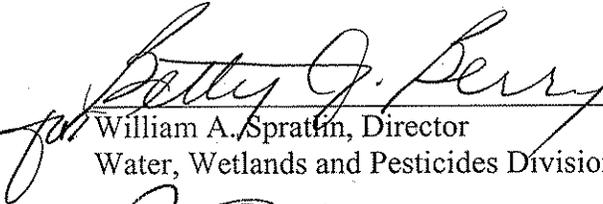
32. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Order.

#### **Termination**

33. 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.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 3rd day of December, 2007.

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

  
Patricia Gillispie Miller  
Senior 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 certified mail, return receipt requested, to:

Larry Bockelman  
City of Wisner  
P.O. Box 367  
Wisner, Nebraska 68791-0367

Steve Goans  
NPDES Compliance Coordinator Unit Supervisor  
Lincoln Office, The Atrium  
1200 N. Street, Suite 400  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922

December 4, 2007  
Date

Kimberly W. J. J. J.