

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

) Docket No. CWA-07-2009-0069

Western Sugar Cooperative)
2100 East Overland Drive)
Scottsbluff, Nebraska 69361)

) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE

Respondent)
)
)

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 of 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 United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent is Western Sugar Cooperative, a cooperative authorized to conduct business in the State of 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. 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.

5. 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.

6. 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 between Nebraska and EPA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

III. Findings of Fact

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

8. Respondent is Western Sugar Cooperative, a sugar beet processor located at 2100 East Overland Drive in Scottsbluff, Nebraska. The facility has a five-celled lagoon system for the treatment of wastewater that discharges wastewater via one outfall.

9. Respondent’s outfall is a “point source” as defined by CWA Section 502(14), 33 U.S.C. §1362(14).

10. Respondent’s facility causes the “discharge of pollutants” as defined by the CWA Section 502(12), 33 U.S.C. § 1362(12).

11. Respondent’s wastewater treatment plant (“WWTP”) discharges pollutants via a drainage ditch into the North Platte River, a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. §1362(7).

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

13. NDEQ granted Permit No. NE0111686 to Respondent, effective April 1, 2006, through March 31, 2011, for discharges from its wastewater outfall into the North Platte River.

14. On October 2, 2008, EPA performed an inspection of Respondent’s facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

V. Findings of Violation

15. Paragraphs 7 through 14 are incorporated by reference as if fully set forth herein.

Effluent Limit Violations

16. Respondent's NPDES Permit No. NE0111686, Part II, Sections C set forth limits for Outfall 001 Seasonal Fecal Coliform Discharge Limitations and Monitoring Requirements.

17. Part II, C of Respondent's NPDES permit establishes a daily maximum limit for Fecal Coliform of 400 colony forming units /1000 mL(CFU/1000mL).

18. A review of Respondent's Discharge Monitoring Reports revealed that Respondent's discharge exceeded the maximum permitted limits for Fecal Coliform as follows:

<u>Month</u>	<u>Limit</u>	<u>Reported Value (Maximum Value)</u>
November 2006	400 CFU/1000mL	520 CFU/1000mL
December 2006	400 CFU/1000mL	460 CFU/1000mL
January 2007	400 CFU/1000mL	501 CFU/1000mL
May 2007	400 CFU/1000mL	30,000 CFU/1000mL
September 2007	400 CFU/1000mL	1360 CFU/1000mL
December 2007	400 CFU/1000mL	3200 CFU/1000mL
January 2008	400 CFU/1000mL	11,250 CFU/1000mL
February 2008	400 CFU/1000mL	1212 CFU/1000mL
May 2008	400 CFU/1000mL	1600 CFU/1000mL
June 2008	400 CFU/1000mL	1600 CFU/1000mL

19. Part II, D of Respondent's NPDES permit establishes a 30 day average and a daily maximum discharge limit for Total Residual Chlorine of .02 mg/L for the Spring and Summer Seasons, March 1 through October 31. Part II, D of Respondent's NPDES permit establishes Winter Season, November 1 through February 28, 30 day average discharge limits of .01 mg/L and a daily maximum of .02 mg/L for Total Residual Chlorine.

20. A review of Respondent's Discharge Monitoring Reports (DMR) revealed that Respondent's discharge exceeded the permitted average limits for Total Residual Chlorine as follows:

<u>Month</u>	<u>30 day Avg. Limit</u>	<u>Reported Value (30 day average)</u>
October 2006	0.02 mg/L	0.04 mg/L
November 2006	0.01 mg/L	0.02 mg/L
December 2006	0.01 mg/L	0.02 mg/L
January 2007	0.01 mg/L	0.02 mg/L
February 2007	0.01 mg/L	0.02 mg/L
March 2007	0.02 mg/L	0.03 mg/L
April 2007	0.02 mg/L	0.05 mg/L

21. Part II, D of Respondent's NPDES permit establishes Spring Season, March 1 through May 31, 30 day average discharge limit of 14 mg/L for Ammonia as Nitrogen. Part II, D of Respondent's NPDES permit establishes Summer Season, June 1 through October 31, 30 day average discharge limits of 6.4 mg/L for Ammonia as Nitrogen.

22. A review of Respondent's Discharge Monitoring Reports (DMR) revealed that Respondent's discharge exceeded the permitted average limits for Ammonia as Nitrogen as follows:

<u>Month</u>	<u>Limit</u>	<u>Reported Value (30 day average)</u>
October 2007	6.4 mg/L 30 day average	10.1 mg/L
March 2008	14 mg/L 30 day average	16 mg/L
June 2008	6.4 mg/L 30 day average	7.4 mg/L

23. Respondent's discharge of the pollutants Fecal Coliform, Total Residual Chlorine and Ammonia as Nitrogen in excess of permit limits are violations of the terms and conditions of Respondent's NPDES permit, and as such, are violations of Sections 301(a) of the CWA, 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

V. Order For Compliance

24. 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 in Paragraphs 25 through 28 of this Order.

25. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is 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.

26. Within thirty (30) days of the effective date of this Order, Respondent shall provide EPA a written description of the immediate interim measures that Respondent shall take to address the effluent limit violations from Respondent's NPDES outfall. Respondent shall perform such interim measures, and any other interim measures that may be directed by EPA, until such time as the Compliance Plan required by Paragraph 27, below, can be developed, approved by EPA, and implemented by Respondent.

27. Within thirty (30) days of receipt of this Order, Respondent shall provide the EPA a proposed Compliance Plan, for EPA's review and approval, which shall describe in detail how Respondent will come into compliance with the requirements of Respondent's NPDES permit, as described in the Findings set for above. At a minimum, the proposed Compliance Plan shall include the following:

- a. A description of any process changes Respondent proposes to undertake at the Respondent's facility to eliminate violations of Respondent's NPDES permit;
- b. A description of any wastewater treatment installation or modification Respondent proposes to undertake at Respondent's facility to eliminate violations of Respondent's NPDES permit;
- c. A schedule for implementation of the proposed action(s); and
- d. A detailed description of cost estimates relating to performance of the above action(s).

28. From the effective date of this Order, until terminated by EPA, Respondent shall submit to EPA, on a quarterly basis, DMRs. The reports shall be postmarked no later than the 28th day of the month following the completed reporting period. Respondent shall continue to submit DMRs to NDEQ in accordance with Respondent's NPDES permit.

Certification

29. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principle executive officer or a 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

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

Mr. Raju Kakarlapudi
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

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

Mr. Steven Goans, Supervisor
Wastewater Section
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
Lincoln, Nebraska 68509-8922.

VI. General Provisions

Effect of Compliance with the Terms of this Order for Compliance.

32. 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 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.

33. 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 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 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

34. 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

35. 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.

Termination

36. 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.

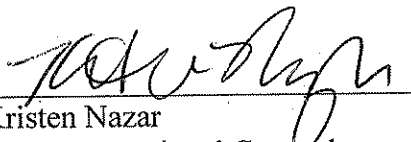
Effective Date

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

Issued this 7th day of July, 2009.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101



Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

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:

Mr. Shawn Sullivan, Environmental Manager
Western Sugar Cooperative
2100 East Overland Drive
Scottsbluff, Nebraska 69361

and

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

July 13, 2009
Date

Kimberly Kellard