

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
Village of Arlington, Nebraska)
)
A Municipality)
) Docket No. CWA-07-2008-0090
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 Village of Arlington, Nebraska (hereafter "Respondent" or "Arlington"), 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 National Pollutant Discharge Elimination System ("NPDES") program in Nebraska pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding. 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 NPDES permit issued pursuant to that Section.

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

6. Arlington owns and operates a POTW (hereafter "the POTW") that receives and treats wastewater from various domestic, commercial and industrial sources.

7. Arlington's POTW discharges to Bell 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 August 1, 1998, NDEQ granted NPDES permit No. NE0049166 (hereafter "NPDES permit"), to the Respondent for discharges from the Arlington Wastewater Treatment Facility ("WWTF") to Bell 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 January 31, 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 the Respondent's NPDES permit sets thirty-day average and seven-day average effluent limitations for five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅) and Total Suspended Solids (TSS), and requires monitoring for these parameters at least once per month. The thirty-day average limitations for CBOD₅ are 25.0 milligrams per liter (mg/L) and 11.7 kilograms per day (kg/day), and the seven-day average limitations for CBOD₅ are 40.0 mg/L and 18.8 kg/day. The thirty-day average limitations for TSS are 30.0 mg/L and 14.1 kg/day, and the seven-day average limitations for TSS are 45.0 mg/L and 21.1 kg/day.
12. Appendix A, Section C. of the Respondent's NPDES permit requires the Respondent to comply with the monitoring and records conditions as set forth therein.
13. Appendix A, Section E.1. of the Respondent's NPDES permit requires the Respondent 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 NPDES permit.
14. Appendix A, Section D.4. of the Respondent's NPDES permit requires the reporting of the monthly monitoring results on a quarterly basis as specified in the NPDES permit.
15. On April 21 through April 24, 2008, EPA performed an inspection of the Arlington POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "Inspection").
16. During the Inspection, the EPA inspector observed the operation of Arlington's POTW, performed sampling of the POTW's discharge, and documented his findings regarding Arlington's compliance with its NPDES permit and the CWA, as follows:

- (a) Based on a review of Arlington's discharge monitoring reports (DMRs), Arlington's POTW exceeded the NPDES permit limitations for CBOD₅ and TSS as follows:
- September 2006 – CBOD₅ thirty-day average and seven-day average in mg/L
- January 2007 – TSS thirty-day average and seven-day average in mg/L
- July 2007 – CBOD₅ thirty-day average in mg/L
- (b) Based on the analysis of samples collected by the EPA inspector, the Respondent's POTW exceeded the thirty-day average for TSS mg/L on April 22 and April 24, 2008 and seven-day average limitations for TSS mg/L on April 24, 2008. In addition, on April 22 through April 24, 2008, the mass limits for TSS, thirty-day average kg/day and seven-day average kg/day, were exceeded. The mass limits for CBOD₅, thirty-day average kg/day, were exceeded on April 22 and April 23, 2008.
- (c) Based on observations and review of the Respondent's records between January 2006 through March 2008 by the EPA inspector, periods of non-compliance were noted, including exceeding maximum holding time for grab samples for pH and fecal coliform, not adequately keeping sample collection records, not properly calibrating the flow measurement equipment regularly, and not collecting monthly effluent sample results as required by the NPDES permit.
- (d) Based on observations and review of the Respondent's records by the EPA inspector, the Respondent has not maintained the facility in good working order and operated as efficiently as possible, in order to achieve compliance with the terms and conditions of the NPDES permit. Operation and maintenance issues include but are not limited to the frequent break down of traveler arms, inadequate operating files for individual equipment, inadequate supply of spare parts, failure to keep an operation and maintenance manual for the facility, and during the time of the inspection on April 22-24, 2008, solids floating on the clarifiers and on top and leaving the chlorine contact basin were observed.
- (e) Based on observations and review of the Respondent's records by the EPA inspector, the Respondent failed to submit complete DMRs consistent with the requirements of the NPDES permit from March through July 2006, May 2007, and September 2007.

III. Findings of Violation

17. Respondent violated its NPDES permit by failing to comply with the effluent limitations for CBOD₅ and TSS during the time periods identified in Paragraph 16, subparagraphs (a) and (b), above.

18. Respondent violated its NPDES permit by failing to comply with conditions for monitoring and maintaining records described in Paragraph 16, subparagraph (c), above.

19. 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 NPDES permit, as described in Paragraph 16, subparagraph (d), above.

20. Respondent violated its NPDES permit by failing to comply with the reporting conditions, as described in Paragraph 16, subparagraph (e), above.

21. Respondent's violations of the requirements of its NPDES Permit, as identified in Paragraphs 17 through 20 above, constitute violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

IV. Order for Compliance

22. 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.

23. Immediately upon the Effective Date of this Order, Respondent shall take whatever actions 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.

24. 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; and
- (b) An explanation of processes and procedures developed, revised and implemented to prevent future violations and ensure compliance with the NPDES permit requirements.

25. After review of the information submitted by Respondent pursuant to Paragraph 24, above, EPA may determine that additional information is needed and/or additional corrective measures are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

26. For one year from the effective date of this Order, Respondent shall submit to EPA on a quarterly basis, monthly DMRs. 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).

27. 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 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

28. All documents required to be submitted to 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

29. 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

30. 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.

31. 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 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

32. 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

33. 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

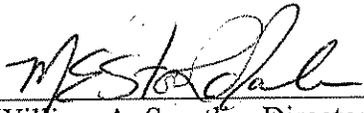
34. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Order.

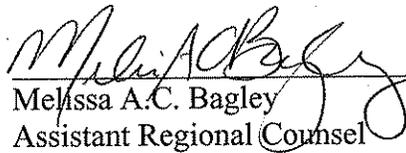
Termination

35. 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 6th day of October, 2008.


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


Melissa A.C. Bagley
Assistant Regional Counsel

