



4. Pursuant to Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1), EPA promulgated regulations codified at 40 C.F.R. Part 501 and Part 503 governing the standards for the use or disposal of domestic sewage sludge.
5. The State of Nebraska has not been authorized under Section 405(f) of the CWA and Section 40 C.F.R. Part 503 to administer the sewage sludge program in Nebraska. EPA remains responsible for enforcement of the requirements of 40 C.F.R. Part 503 until such time as the State of Nebraska is authorized to administer the program.
6. 40 C.F.R. § 503.9(w) defines sewage sludge, and states in pertinent part: “*Sewage sludge* is solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage...”
7. 40 C.F.R. § 503.7 states, in pertinent part “that any person who prepares sewage sludge shall ensure that the applicable requirements are met when the sewage sludge is applied to the land...”
8. 40 C.F.R. § 503.12 requires that no person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365 day period if the annual “agronomic” application rate in 503.13(c) has been reached during that period.
9. 40 C.F.R. § 503.15 states, in pertinent part, that septage applied to agricultural land, forest, or a reclamation site shall meet the requirements for pathogen reduction set forth at 40 C.F.R. §§ 503.32(c)(1) or (c)(2), and the requirements for vector attraction reduction set forth at 40 C.F.R §§ 503.33(b)(8), (b)(9), or (b)(12).
10. 40 C.F.R. 503.16(b) requires if either the pathogen requirements in §503.32(c)(2) or the vector attraction reduction requirements in §503.33(b)(12) are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements.
11. 40 C.F.R. § 503.17(b) requires that when domestic septage is land applied (agricultural land, forest, or reclamation site), the person who applies the domestic septage shall develop and retain following specified information for five years:
  - a. The location, by either street address or latitude and longitude, of each site on which domestic septage is applied;
  - b. The number of acres in each site on which domestic septage is applied;
  - c. The date domestic septage is applied to each site;
  - d. The nitrogen requirement for the crop or vegetation grown on each site during a 365 day period;
  - e. The rate, in gallons per acre per 365 day period, at which domestic septage is applied to each site;

- f. A certification statement that documents compliance with the application, pathogen reduction and vector attraction reduction requirements of § 503.32 and 503.33;
- g. A description of how the pathogen requirements in either 40 C.F.R. §§ 503.32(c)(1) or (c)(2) are met; and
- h. A description of how the vector attraction reduction requirements in 40 C.F.R. §§ 503.33 (b)(9), (b)(10), or (b)(12) are met.

### **III. Findings of Fact**

12. The City of Hartington, Nebraska, (hereafter “Respondent” or the “City”) is a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and owns and operates a Publicly Owned Treatment Works (“POTW”) for the City.

13. Respondent’s POTW, described in Paragraph 12 is a “point source” that discharges “pollutants” to the unnamed tributary of Norwegian Bow Creek which is a “navigable water,” as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.* Respondent’s POTW consists of two aerated basins, followed by clarifiers before discharge to the receiving stream. Waste biosolid sludge is stored in two lagoon surface impoundments before being land applied. Four groundwater monitoring wells are located around the perimeter of the lagoons for monitoring the percolation rate from the lagoons.

14. On or about October 1, 2008, NDEQ issued Respondent an NPDES Permit No. NE0049115, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“NPDES permit”).

15. On or about August 25-28, 2009, EPA performed an on-site evaluation of the City’s Wastewater Treatment Facility (WWTF). During the evaluation, EPA identified violations of the City’s NPDES permit and 40 C.F.R. Part 503. A copy of the inspection report documenting the immediate deficiencies was submitted to NDEQ and the City on or about January 21, 2010.

### **IV. Findings of Violations**

#### **Failure to Comply with Discharge Monitoring Requirements**

16. Part II (Effluent Discharge Limitations and Monitoring Requirements) and Appendix A of Respondent’s NPDES permit requires that the volume of the flow of discharged effluent from Outfall 001, be monitored and reported in Discharge Monitoring Reports (submitted quarterly).

17. Part II of Respondent’s NPDES permit sets mass limit for ammonia that are dependent on the measurement of the flow (volume) of discharged effluent.

18. At the time of EPA’s inspection, Respondent was failing to monitor and report effluent flow as required by Part II and Appendix A (Part C.2), of its NPDES permit.

This failure also resulted in misreporting of compliance with Respondent's mass limits for ammonia.

19. Respondent's failure to monitor or report effluent flow and to accurately report the mass of discharged ammonia, as required by Part II and Appendix A of its NPDES permit, was a violation of Part II and Appendix A of its NPDES permit, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

#### **Failure to Comply with the requirements for Biosolids use and disposal**

20. EPA's inspection and review of Respondent's documentation found that Respondent had failed to calculate agronomic rates prior to the application of sewage sludge at its approved sites since approximately 2004, in violation of 40 C.F.R. §§ 503.12 and 503.13(c).

21. EPA's inspection and review of Respondent's documentation found that, since approximately 2004, the Respondent had failed to meet pathogen reduction requirements before land applying sewage sludge, in violation of 40 C.F.R. § 503.15.

#### **V. Order For Compliance**

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.

22. Immediately upon receipt of this Order, Respondent shall take all actions necessary to ensure the biosolids sewage sludge that is generated and/or land applied by Respondent, is managed in full compliance with 40 C.F.R. 503, as required 40 C.F.R. § 503.7.

23. Immediately upon receipt of this Order, Respondent shall properly treat for pathogen and vector reduction prior to land application of biosolids, as required by 40 C.F.R. §§ 503.32(c)(1) or (c)(2);

24. Immediately upon receipt of this Order, Respondent shall prepare and maintain all documentation required for its preparation and/or application of biosolids sewage sludge, as required by 40 C.F.R. § 503.17(b).

25. Immediately upon receipt of this Order, Respondent shall contact a certified wastewater engineer to develop a plan for the installation of an effluent flow meter capable of measuring flow with a maximum deviation of +/- 10%, as required by Part II and Appendix A (Part C.2) of the Respondent's NPDES permit. Within sixty (60) days of receipt of this Order, Respondent shall submit a written statement to EPA which describes how the City corrected the lack of effluent flow monitoring at Outfall 001. The report shall include details of all equipment installed, invoices, dated photographs of the installation of such equipment, and a calibration schedule.

26. Within sixty (60) days of receipt of this Order, Respondent shall submit a Sludge Management Plan (SMP) to EPA for review and approval. The SMP shall include the following information to determine compliance with the requirements of 40 C.F.R. 503:

- a. The current sludge depth measurements in lagoons (taken after receipt of this Order);
- b. A description of when sampling for all required 40 C.F.R. Part 503 parameters, such as metals and pathogen and vector analysis will occur prior to land application or disposal of removed biosolids (the Respondent may use the table found in 40 C.F.R. § 503.16 as a reference to determine the sampling schedule)
- c. A description of the method of recording sampling results of biosolids prior to application;
- d. The planned method of removal of sludge from the lagoons;
- e. A description of changes in the administration of biosolids records retention;
- f. Maps of biosolids land application sites;
- g. Calculated agronomic application rates for each application site, if applying more than two tons per acre; and
- h. The City's planned schedule to remove sludge from the lagoons in a two-year cycle, or to upgrade the sludge storage lagoons as permanent sludge disposal units, in compliance with 40 C.F.R. Part 503.

#### **VI. Submissions**

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

Kimberly Willis (WWPD/WENF)  
Environmental Scientist  
Water, Wetlands and Pesticides Division  
EPA Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

28. A copy of documents to be submitted to EPA by this Order, shall be submitted by mail to:

Steve Goans  
Nebraska Dept. of Environmental Quality  
1200 N Street, Suite 400  
The Atrium  
Lincoln, Nebraska 68509-8922

## **VII. General Provisions**

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

29. 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.

30. At EPA's sole discretion, extensions of the compliance deadlines for this may be made by EPA by written notice to Respondent without further formal amendment to the Order.

31. 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 Section 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1318 and /or any other authority.

### **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 provisions 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.

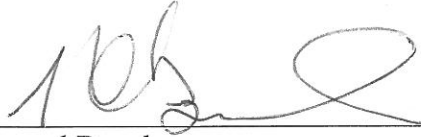
### **Effective Date**

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

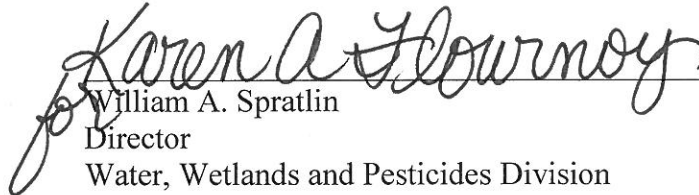
### Termination

35. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 4th day of October, 2010.



Howard Bunch  
Senior Assistant Regional Counsel  
Office of Regional Counsel



William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the City of Hartington, Nebraska.

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Nebraska:

Steve Goans  
Nebraska Dept. of Environmental Quality  
1200 N Street, Suite 400  
The Atrium  
Lincoln, Nebraska 68509-8922

10/6/2016  
Date

  
Name