

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-07-2021-0059
	)	
Randolph, Nebraska,	)	
	)	
	)	FINDINGS OF VIOLATION AND
	)	ORDER FOR COMPLIANCE ON
	)	CONSENT
	)	
Respondent,	)	
	)	
	)	
Proceedings under Section 309(a)(3)	)	
of the Clean Water Act, 33 U.S.C. 1319(a)(3)	)	
_____	)	

**Preliminary Statement**

1. The following Findings of Violation and Administrative Order for Compliance on Consent ("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 U.S. Environmental Protection Agency ("EPA") to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Enforcement and Compliance Assurance Division.

2. Respondent is the city of Randolph, Nebraska ("Respondent" or "the City") and was at all relevant times a municipality organized under the laws of the state of Nebraska.

3. EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent through entering into this Order to address Respondent's alleged noncompliance with the CWA and violation of its National Pollutant Discharge Elimination System ("NPDES") permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

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

6. Respondent consents to personal service of this Order by electronic mail delivered to the email address(es) listed for Respondent on the Certificate of Service.

### **Statutory and Regulatory Framework**

7. 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, which provides that pollutants may be discharged in accordance with the terms of an NPDES permit issued pursuant to that Section.

8. 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.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "waters of the United States," which in turn has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

10. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

11. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works ("POTW") includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

12. The Nebraska Department of Environment and Energy ("NDEE") is the state agency in Nebraska with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations. EPA retains concurrent enforcement authority with authorized state programs for violations of the CWA.

### **EPA's General Allegations**

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

14. Respondent is the owner and/or operator of a POTW in Randolph, Nebraska, that includes a sewage collection system, which receives wastewater from various domestic and non-domestic sources, and a wastewater treatment facility ("WWTF"), consisting of a grinder within the influent pit, and an activated sludge treatment system consisting of an oxidation ditch with four floating aerators. Wastewater from the oxidation ditch flows to a clarifier located north of the ditch.

15. The WWTF discharges through an outfall to an unnamed tributary of Middle Logan Creek ("Outfall 001"). Middle Logan Creek is a tributary to Logan Creek to Logan Creek Dredge to the Elkhorn River, which is a tributary to the Platte River. The unnamed tributary and Middle Logan Creek are "waters of the United States" and, therefore, "navigable waters" pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. The WWTF is a "point source" that "discharges pollutants" to "navigable waters" of the United States, as these terms are defined by Section 502(14), (12) and (7) of the CWA, 33 U.S.C. § 1362(14), (12) and (7), respectively.

17. On March 26, 2018, the NDEE issued NPDES permit number NE0029149 to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 ("NPDES Permit"), effective until March 31, 2023. The NPDES Permit authorizes discharges from the WWTF to the unnamed tributary to Middle Logan Creek subject to conditions and limitations set forth in the Permit.

18. Respondent's NPDES Permit contains requirements to monitor influent, including flow, numeric and narrative effluent limits, s, reporting and for proper operation and maintenance of the WWTF.

19. On August 17-20, 2020, EPA performed a compliance inspection of the City's WWTF ("Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. §1318(a).

20. During the Inspection, the EPA inspector reviewed and collected copies of records relating to the Permit, observed the City's POTW, including the collection system, WWTF, the discharge location, and collected influent and effluent samples.

21. At the conclusion of the Inspection, the EPA inspector provided the City a Notice of Potential Violation ("NOPV") which described the inspector's preliminary observations regarding potential violations, including, but not limited to, failure to meet effluent limits, failure to collect effluent samples that are representative of discharge, failure to comply with biosolids record keeping, and failure to comply with Appendix A.7 (proper operation and maintenance) of the NPDES permit.

22. The City provided information in response to the NOPV to the inspector by email on or about September 18, 2020, following the Inspection.

23. A copy of the Inspection Report was sent to the City on or about October 1, 2020.

### **EPA's Findings**

#### **Count 1**

#### **Failure to Comply with Effluent Limitations**

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

25. Part I of Respondent's NPDES Permit establishes discharge limits and monitoring requirements for Outfall 001, including seasonal monthly average and daily maximum limits for ammonia in Part I.B, and monthly and daily maximum limits for *Biochemical Oxygen Demand (5-day)* and *Total Suspended Solids* in Part 1.A.

26. Part IV.E of Respondent's NPDES Permit requires that the 30-day average percent removal of Carbonaceous Biochemical Oxygen Demand ("CBOD") and Total Suspended Solids ("TSS") by the WWTF shall not be less than 85%.

27. Based on observations and sampling documented during the EPA Inspection, review of information provided by the City, effluent monitoring data for the WWTF, and other relevant information, the EPA finds that between September 2018 and April 2021, the City violated the effluent limitations and removal requirements for Outfall 001 set forth in its NPDES Permit for Ammonia, Biochemical Oxygen Demand (5-day), and Total Suspended Solids on 16 occasions.

28. 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).

#### **Count 2**

#### **Failure to Properly Operate and Maintain the POTW**

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

30. Paragraph 7 of Appendix A of Respondent's NPDES Permit requires that the City "at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective performance based on designed facility removals, effective management, adequate operator staffing and training, adequate process controls, adequate funding that reflects proper user fee schedules, adequate laboratory controls and appropriate quality assurance procedures."

31. During EPA's inspection, the inspector noted an excessive amount of floating mats of solids on the surface of the oxidation ditch, and an excessive amount of algae growth on the weirs.

32. In noncompliance reports submitted to NDEQ, the City has indicated that failures to properly operate and maintain the WWTP have contributed to exceedances of effluent limits in its NPDES Permit, including the following: in the report received by NDEQ on February 2, 2021, the City stated that on January 13, 2021, a sludge pump opening was accidentally left closed which caused sludge to build in the clarifier leading to ammonia effluent violations. In the report received by NDEQ on August 2, 2019, the City stated that a circuit breaker on the sludge recirculation pump was tripped which caused ammonia effluent limit violations in July 2019.

33. The failure to properly operate and maintain the WWTF in a manner to remove BOD and TSS is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

### **Count 3**

#### **Failure to Collect Effluent Samples that are Representative of Discharge**

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

35. Section A. of Respondent's NPDES Permit requires that the effluent sampling be a "24-hour" composite. Appendix A.19.e.ii defines how composite samples are to be collected. The permit requires that, at a minimum, one discrete aliquot must be collected every three hours from a continuously discharging system. Although the facility is currently taking three discrete aliquots, it is not taking them over a 24-hour period as required by the permit. The facility needs to take at a minimum of eight discrete aliquots over a 24-hour period.

36. The failure to collect representative sampling of discharge is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

### **Count 4**

#### **Failure to Comply with Record Keeping Requirements of Biosolids**

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

38. Federal regulations at 40 C.F.R. Part 503 and Part II.A of Respondent's NPDES Permit requires that the City comply with recordkeeping requirements related to biosolid sludge management.

39. During the inspection, the City failed to produce records of how much or how often biosolids are land applied.

40. The failure to maintain records of sludge management is a violation of 40 CFR Part 503 and the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

### **Order for Compliance on Consent**

41. 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.

42. In accordance with this Order, the Respondent shall immediately cease all discharges except in compliance with its NPDES Permit and shall take all necessary actions 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.

43. *Compliance Plan.* By no later than sixty (60) days after the effective date of this Order, the City shall submit to the EPA, with a copy to the NDEE, a comprehensive written plan ("Compliance Plan") for achieving compliance with the City's NPDES Permit no later than twelve (12) months after the effective date of this Order.

a. The Compliance Plan 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 and narrative limitations prescribed by the City's NPDES Permit.

b. The Compliance Plan shall include a proposed sequential milestone schedule for completing any proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than eighteen (18) months after the effective date of this Order.

c. The EPA will promptly review, and may provide comments on, the City's Compliance Plan.

44. *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 Order on Consent and achieved compliance with its NPDES Permit.

45. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 55 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

### **Reports/Submissions**

46. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 49 below, shall be submitted by electronic mail to: [harris.bryant@epa.gov](mailto:harris.bryant@epa.gov).

47. 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:

Bryant Harris, or his successor  
U.S. Environmental Protection Agency Region 7  
Enforcement and Compliance Assurance Division Water Branch  
11201 Renner Boulevard  
Lenexa, Kansas 66219

48. All documents required to be submitted pursuant to this Order shall also be submitted by email to NDEE to the address provided below:

Reuel S. Anderson, Supervisor  
NPDES Permits and Compliance Section  
[reuel.anderson@nebraska.gov](mailto:reuel.anderson@nebraska.gov)

49. Each submission requirement of this Order shall contain the following certificationsigned 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 Order for Compliance**

50. 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 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.

51. 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. 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 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 CWA for any violation whatsoever.

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

52. 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**

53. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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**

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

### **Modification**

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

### **Termination**

56. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.



**For the Complainant, United States Environmental Protection Agency Region 7:**

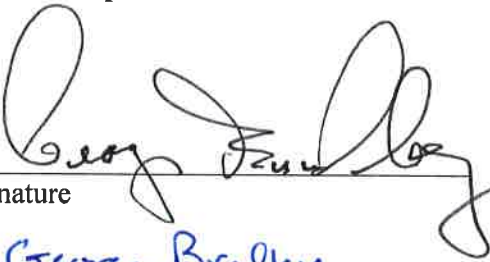
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Diane Huffman  
Acting Director  
Enforcement and Compliance Assurance Division

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Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel

**For the Respondent:**

  
Signature \_\_\_\_\_ Date 8-5-21

George Bradley  
Name \_\_\_\_\_

Mayor  
Title \_\_\_\_\_

**Certificate of Service**

I certify that on the date noted below I delivered by electronic mail a true copy of this Administrative Order for Compliance on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by electronic mail, return receipt requested, to:

Benjamin Benton  
Randolph City Administrator  
P.O. Box 457  
Randolph, Nebraska 68771

[citrاند@cableone.net](mailto:citrاند@cableone.net)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature