

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
The City of Tilden, Nebraska,)
)
Respondent.)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Docket No. CWA-07-2012-0004

FINDINGS OF VIOLATION
AND ORDER FOR COMPLIANCE

I. Statutory Authority

1. The following FINDINGS OF VIOLATION are made and 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), which authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, Region 7.

2. 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.

3. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency within the state of Nebraska that has been authorized by EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

4. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

II. Factual and Legal Allegations

5. The city of Tilden, Nebraska, (hereafter “City” or “Respondent”), is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all times relevant, Respondent was, and still is, the owner and/or operator of a Publicly Owned Treatment Works (“POTW”) in Antelope and Madison Counties, Nebraska, that includes a wastewater treatment plant (“WWTP”) and sewage collection system, which receive wastewater from various domestic and non-domestic sources. As defined by 40 C.F.R. § 403.3(q), a POTW includes but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

7. The POTW discharges to Giles Creek in Antelope County, Nebraska, and thereafter to the Elkhorn River.

8. The City’s POTW is a “point source” that “discharges pollutants” to “navigable water” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

10. On or about June 27, 2002, NDEQ issued NPDES Permit No. NE0027910 (“Permit”) to Respondent pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The NDEQ administratively extended the Permit by letter dated July 27, 2007.

11. Part I of the City’s Permit, Lagoon Final Effluent Limitations and Monitoring Requirements, includes requirements for sampling frequency, sample type and discharge limitations for various pollutant parameters, including but not limited to Carbonaceous Biochemical Oxygen Demand measured over a five-day period (“CBOD₅”), Total Suspended Solids (“TSS”), Fecal Coliform, and Ammonia as Nitrogen (“Ammonia”), as follows:

Parameter	Units	30 Day Average	7 Day Average	Daily Maximum	Monitoring Frequency
CBOD ₅	mg/L*	25.0	40.0	-	Monthly
TSS	mg/L	80.0	-	120.0	Monthly
Fecal Coliform (May 1 – September 30) (geometric mean of data)	#/100 ml**	200	-	400	Monthly
Ammonia (April 1 – October 31)	mg/L kg/day***	2.12 1.04	-	4.61 2.25	Monthly
Ammonia (November 1 – March 31)	mg/L kg/day	4.24 1.97	-	7.91 3.67	Monthly

* Milligrams per Liter; ** Colony count per 100 milliliters; *** Kilograms per day

12. Part IV, Paragraph A of the City’s Permit, Other Requirements and Conditions, requires the City’s WWTP to meet a 30-day removal efficiency of 85 percent for CBOD₅ and TSS, based on comparison of effluent samples measurements to influent sample measurements.

13. On or about June 19 through 22, 2006, EPA performed an Inspection ("2006 Inspection") of the City's POTW pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), and documented violations of the City's Permit related to recordkeeping and effluent violations for CBOD₅, TSS, Ammonia and Fecal Coliform.

14. Based on the findings from the 2006 Inspection and other relevant information, on or about January 22, 2007, EPA issued a Findings of Violation and Order for Compliance ("2007 Order") to the City pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Docket No. CWA-07-2007-0012. The 2007 Order required the City to correct the deficiencies and eliminate and prevent recurrence of the violations, and comply with all applicable requirements of its Permit.

15. On or about July 20, 2010, EPA performed an Inspection ("2010 Inspection") of the City's POTW pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). A copy of the 2010 Inspection report was sent to NDEQ and the City on or about September 30, 2010.

16. During the Inspection, the EPA inspector interviewed City personnel, reviewed documents and records maintained by the City, inspected and collected influent and effluent samples from the WWTP, and observed the receiving stream to which the WWTP discharges. At the conclusion of the 2010 Inspection, the City was issued a Notice of Potential Violation ("NOPV") indicating, among other things, that the City failed to follow the schedule in the 2007 Order and continued to have effluent violations.

17. In response to the NOPV, the City submitted a letter to the Inspector dated July 26, 2010, indicating options the City has considered to resolve the Ammonia and other effluent violations. In the letter, the City stated its intention to proceed with planning and design of an ISAM, Sequential Batch Reactor ("SBR") activated sludge wastewater treatment facility, but did not identify a schedule for its completion or for implementing other actions to achieve compliance with the effluent limitations in its Permit.

III. Findings of Violation

18. The facts stated in Paragraphs 5 through 17 above, are hereby incorporated by reference.

19. Based on information and data collected during the 2010 Inspection and other relevant information, including Discharge Monitoring Reports ("DMRs") covering the period from January 2007 through July 2011 submitted by the City to the NDEQ pursuant to the City's Permit, the City violated its Permit effluent limitation set forth in Part I of the Permit during the months identified below:

- a. CBOD₅ 30-day average concentration limit of 25.0 mg/L:
2007 – January, February and July
2008 – February

2010 – February
2011 – January, March, April and May

- b. TSS 30-day average concentration limit of 80 mg/L:
2011 – April
- c. Fecal Coliform daily maximum limit of 200 colonies per 100 ml:
2007 – June and September
2008 – May-September
2009 – May-September
2010 – May-September
2011 – May-July
- d. Ammonia daily maximum concentration limit of 4.61 mg/L (April-October) and 7.91 mg/L (November-March):
2007 – January-June, October and December
2008 – January-May, October and December
2009 – January, February, April, May and October-December
2010 – January-June and August-December
2011 – January-April
- e. Ammonia daily maximum mass limit of 2.25 kg/day (April-October) and 3.67 kg/day (November-March):
2007 – January-June, August, October and December
2008 – January-May, October and December
2009 – January, February, April, May, October-December
2010 – January-June and August-December
2011 – January-April
- f. Ammonia 30-day average concentration limit of 2.12 mg/L (April-October) and 4.24 mg/L (November-March):
2007 – January-June, August and October-December
2008 – January-December
2009 – January-May, November and December
2010 – January-December
2011 – January-April and June
- g. Ammonia 30-day mass limit of 1.04 kg/day (April-October) and 1.97 kg/day (November-March):
2007 – August, October and December
2008 – January and May-December
2009 – January-May and October-December
2010 – January-December
2011 – January-April and June

20. Based on information and data collected during the 2010 Inspection and other relevant information, including DMRs covering the period from January 2007 through July 2011 submitted by the City to the NDEQ pursuant to the City's Permit, the City has violated its Permit removal efficiency requirement set forth in Part IV, Paragraph A of the Permit during the months identified below:

- a. CBOD₅ 85% removal efficiency requirement:
 - 2007 – January-May and July
 - 2008 – January-March, August, September, November and December
 - 2009 – September and December
 - 2010 – January-June and October-December
 - 2011 – January-June
- b. TSS 85% removal efficiency requirement:
 - 2007 – January-December
 - 2008 – January-May, July-October and December
 - 2009 – January, February, April, June-September, November and December
 - 2010 – January-December
 - 2011 – January-July

21. Respondent's violations identified in Paragraphs 19 and 20 above are violations of the requirement of the City's Permit, and as such are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

IV. Order for Compliance

22. Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

23. This Order supersedes the Findings of Violation and Order for Compliance issued by the EPA on or about January 22, 2007, Docket No. CWA-07-2007-0012, which terms of compliance are hereby replaced by the provisions set forth below.

24. Immediately upon receipt 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 the applicable requirements of its Permit.

25. *Schedule for Compliance* – By no later than January 28, 2012, Respondent shall submit to EPA, for review and approval, with a copy to NDEQ, a detailed Schedule for Compliance (“Schedule”) with interim and final action items as set forth in Paragraph 26 below, to be taken by the City to comply with all terms, limitations and conditions of its Permit.

26. The Schedule shall, at a minimum, include a detailed plan and schedule for correction of the deficiencies, installation of equipment and/or construction of new facilities to

ensure all discharges from the City's POTW comply with the secondary treatment and water quality-based limitations in the City's applicable Permit. The schedule for implementing the proposed modification(s) must include interim milestones to be reported on a semiannual basis, unless noted otherwise below, and shall in no event exceed the deadlines set forth below:

- a. By January 28, 2012, Respondent shall submit a detailed Schedule, for review and approval by EPA pursuant to Paragraph 27, and shall identify one or more City personnel, with contact information, for purposes of communications regarding this Order; and
- b. The detailed Schedule shall provide for correcting all deficiencies and meeting all applicable NPDES permit limitations as expeditiously as possible, but in no case later than October 31, 2015.

27. *Approval of Schedule and Implementation* – Upon receipt, the EPA will review the Schedule submitted by the City and, after consultation with the NDEQ, shall approve the Schedule or require modification and resubmission of portions or all of such submittals pursuant to Paragraph 28, below. Upon written approval by the EPA, the City shall implement the provisions of the Schedule as a condition of compliance with this Order.

28. *Modifications* – If required by the EPA pursuant to Paragraph 27, above, the City shall within forty-five (45) days of receipt of any written comments from the EPA regarding the Schedule, make modifications and changes to it as directed by the EPA, and resubmit the Schedule to the EPA, with a copy to the NDEQ. Upon written request, the EPA may grant a longer period of time for resubmission of such documents.

29. The City shall at all times comply with requirements established by the State of Nebraska and the NDEQ regarding repair, construction, and operation of facilities associated with the City's POTW, including but not limited to, any requirements for work to be performed by certified or licensed professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable State requirements.

Semiannual Reporting

30. Beginning January 28, 2012, Respondent shall submit semiannual reports (by no later than January 28 and July 28 each year) to EPA, with a copy to NDEQ, until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 40, below, that describe the actions taken by City to comply with the terms of this Order. The semiannual reports shall include, at a minimum, the following information:

- a. *Progress Report* – a description, with dates, of activities completed under this Order within the reporting period, including a clear statement as to whether each item identified in the Schedule was completed on time and successfully, and the results achieved;
- b. *Anticipated Actions* – a brief list of the activities planned to comply with the terms of this Order during the next semiannual reporting period and a statement as to whether any delays are expected, and if so, an explanation of the reason for the delay, the anticipated length of delay and the actions the City is taking to remain on schedule (*Note: a delay in completing any item under the Schedule does not relieve the City of the responsibility to meet the final compliance date under the Schedule, which may be extended only upon written consent by the EPA, after consultation with the NDEQ*); and
- c. *DMRs* – submit to the EPA a copy of the signed DMRs for the previous six-month reporting period (*Note: as required by the Permit, the Respondent must submit the original signed DMRs to the NDEQ on a quarterly basis*).

Certification

31. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.2:

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 submissions of false information.

Submittals

32. All documents required for submittal to EPA shall be sent by certified mail, return receipt requested, to the following:

Wayne Dillard, P.E. (or his successor)
Environmental Engineer
Water Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street

Kansas City, Kansas 66101.

33. A copy of each submittal to EPA shall be delivered to NDEQ, as follows:

Steve Goans (or his successor)
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

34. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

35. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

36. 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 of the Act, 33 U.S.C. § 1319, 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

37. 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

38. 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

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

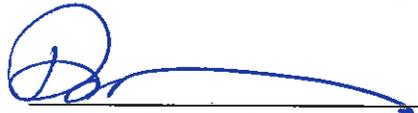
Termination

40. 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 14th day of November, 2011.



Karen A. Flourney
Acting Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of 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 Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North 5th 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 Honorable Steve Rutjens
Mayor, City of Tilden
202 South Center Street
PO Box 301
Tilden, Nebraska 68781.

I further certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Patrick Rice, Assistant Director
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street
PO Box 98922
Lincoln, Nebraska 68509-8922.

11/10/11

Date

Carah A. Moore