

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

10 JUL 17 PM 2:00

IN THE MATTER OF )  
)  
Village of Walthill, Nebraska )  
Walthill Wastewater Treatment Facility )  
Respondent )  
)  
NPDES Permit No. NE0021211 )  
)  
)  
Proceedings under Section 309(a)(3) )  
of the Clean Water Act, 33 U.S.C. )  
§ 1319(a)(3) )  
)

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

Docket No. CWA-07-2010-0092  
FINDINGS OF VIOLATION  
AND ORDER FOR COMPLIANCE

**I. Statutory Authority**

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" or the "Act"), 33 U.S.C. § 1319(a)(3), and Section 308, 33 U.S.C. § 1318, which authority has been delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division.

**II. Regulatory Framework**

1. The Village of Walthill, Nebraska is a municipality and, therefore, is a "person", as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. Respondent is the owner and operator of a Publicly Owned Treatment Works (POTW) located on North Brown Street in the Village of Walthill in Thurston County, Nebraska. This POTW is a "point source" that discharges "pollutants" to the South Omaha Creek which is a "navigable water," as defined by Section 502 of the Act, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the Act, 33 U.S.C. § 1251 et seq.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the Act, 33 U.S.C. § 1342. Section 402 of the Act 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 EPA is the federal agency with the authority to administer the federal NPDES program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and its implementing regulations.

5. On or about January 11, 2007, NPDES Permit No. NE0061263 was issued to Respondent by the EPA pursuant to Section 402 of the Act, 33 U.S.C. § 1342 with an effective date of March 1, 2007. Among other things, the NPDES permit requires Respondent to take regular samples of its discharged effluents and to file the results of these sampling efforts, known as Discharge Monitoring Reports (DMRs), with EPA on a quarterly basis.

### **III. Findings of Facts**

#### **EPA Inspection and Review of Respondent's DMRs**

6. On April 14-15, 2009, EPA conducted a detailed compliance inspection of the Respondent's POTW, which included observation and review of the operation of the POTW and sampling of the POTW's discharges (EPA Inspection). This inspection was conducted under the authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a).

7. In addition to the EPA Inspection, EPA conducted a thorough review of the DMRs filed by the Respondent since the issuance of its permit in March 2007 through the end of 2009.

8. The EPA Inspection and EPA's review of Respondent's DMRs revealed numerous violations of the Respondent's permit. These violations are set forth in Section IV below.

### **IV. Findings of Violation**

9. Table 1 of Section C of the above mentioned NPDES permit, entitled *Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001*, sets forth the effluent limitations for the only outfall at the facility. EPA's review of Respondent's DMRs and the EPA Inspection revealed that Respondent failed to substantially comply with the effluent limitations set forth in this Section since at least March 2007. Respondent's violations of the requirements set forth in this table are as follows:

(a) Five Day Biochemical Oxygen Demand (BOD) – Exceeded Monthly Average Limits of 30 mg/l for the following months:

2009 – Exceeded monthly average limits for all months in 2009  
2008 – Feb, Apr, May, Jun, Jul, Oct, Nov and Dec  
2007 – Mar, Sep and Oct

(b) Five Day Biochemical Oxygen Demand (BOD) – Exceeded Weekly Average Limits of 45 mg/l for the following months:

2009 – Exceeded weekly average limits for all months in 2009  
except March  
2008 – Feb, Apr, May, Jul, Oct, Nov and Dec  
2007 – Mar

(c) Five Day Biochemical Oxygen Demand (BOD) – Exceeded Monthly Average Limits of 25 pounds per day for the following months:

2009 – Exceeded monthly average limits for all months in 2009  
2008 – Feb, Apr, May, Jun, Jul, Sep, Oct, Nov and Dec  
2007 – Mar, Apr and May

(d) Five Day Biochemical Oxygen Demand (BOD) – Exceeded Weekly Average Limits of 38 pounds per day for the following months:

2009 – Jan, Feb, Apr, Jun, Jul, Aug, Oct, Nov and Dec  
2008 – Feb, May, Nov and Dec  
2007 – Mar

(e) Total Suspended Solids (TSS) – Exceeded Monthly Average Limits of 30 mg/l for the following months:

2009 – Exceeded monthly average limits for all months except  
April in 2009  
2008 – Exceeded monthly average limits for all months except  
January in 2008  
2007 – Mar, Apr and Oct

(f) Total Suspended Solids (TSS) – Exceeded Weekly Average Limits of 45 mg/l for the following months:

2009 – Exceeded weekly average limits for all months except  
April in 2009  
2008 – Feb, Apr, May, Jun, Jul, Sep, Oct, Nov and Dec  
2007 – Mar

- (g) Total Suspended Solids (TSS) – Exceeded Monthly Average Limits of 25 pounds per day for the following months:

2009 – Exceeded monthly average limits for all months except  
April in 2009  
2008 – Feb, Apr, May, Jun, Jul, Sep, Oct, Nov and Dec  
2007 – Mar and Apr

- (h) Total Suspended Solids (TSS) – Exceeded Weekly Average Limits of 38 pounds per day for the following months:

2009 – Exceeded monthly average limits for all months except  
April in 2009  
2008 – Feb, Apr, May, Jun, Jul, Sep, Oct, Nov and Dec  
2007 – Mar and Apr

- (i) Five Day Biochemical Oxygen Demand (BOD) – Failed to achieve at least 85% removal in the following months:

2009 – Failed to meet limits for all months of 2009  
2008 – Jan, Feb, Apr thru Dec  
2007 – Mar, Apr, May, Jun and Oct

- (j) Total Suspended Solids (TSS) – Failed to achieve at least 85% removal in the following months:

2009 – Failed to meet limits for all months of 2009  
2008 – Jan and Feb  
2007 – Mar, Apr, May, Jul and Oct

- (k) Ammonia (NH<sub>3</sub>) – Exceeded the required Monthly Average Limits for ammonia by concentration (Mar through Oct 2.2 mg/l, and Nov through Feb 4.1 mg/l) for the following months:

2009 – Exceeded allowable limits for all months in 2009  
2008 – Exceeded allowable limits for all months in 2008  
2007 – Apr, May, Jun, Jul, Aug, Sep, Oct, Nov and Dec  
Failed to make any report in March 2007 and January 2009

- (l) Ammonia (NH<sub>3</sub>) – Exceeded the required Monthly Average Limits for ammonia by weight (Mar through Oct 1.8 pounds per day limit; Nov through Feb 3.4 pounds per day limit) for the following months:

2009 – Exceeded allowable limits for all months in 2009  
2008 – Exceeded allowable limits for all months in 2008 except October  
2007 – Apr, May, Jun, Jul, Aug, Sep, Oct, Nov and Dec  
Failed to make any report in March 2007 and January 2009

- (m) Ammonia (NH<sub>3</sub>) – Exceeded the required Daily Maximum Limits for ammonia by concentration (Mar through Oct 4.5 mg/l limit; Nov through Feb 8.2 mg/l limit) for the following months:

2009 – Exceeded allowable limits for all months in 2009  
2008 – Jan, Mar, Apr, May, Jun, Jul, Aug, Sep, and Dec  
2007 – May, Aug, Sep, Oct, Nov and Dec  
Failed to make any report in March 2007 and January 2009

- (n) Ammonia (NH<sub>3</sub>) – Exceeded the required Daily Maximum Limits for ammonia by weight (Mar through Oct 3.8 pounds per day limit; Nov through Feb 6.8 pounds per day limit) for the following months:

2009 – Jan, Feb, Mar, Jul, Oct and Nov  
2008 – Jan, Mar, May, Jun, Jul, Aug, Nov and Dec  
2007 – May, Aug, Sep, Oct, Nov and Dec  
Failed to make any report in March 2007 and January 2009

10. Respondent failed to sample pH in accordance with 40 CFR 136 which requires pH to be analyzed within 15 minutes of the sample time. Respondent used pH results of samples which exceeded holding times from at least March 2007 through April 2009.

11. Section C of Respondent's NPDES permit sets forth a single sample maximum limit for *E. coli* bacteria of 409 cfu/100ml. Section F of Respondent's NPDES permit requires Respondent to achieve compliance with the bacteria limits (*E. coli*) set forth in the permit no later than March 1, 2009, which is the effective date of the compliance schedule listed in the permit. As of the date of this Order, Respondent has not achieved compliance with the bacteria limits set forth in the permit.

12. Paragraph 2.b) of Section D of the NPDES permit, requires Respondent to develop and submit a sludge management plan to EPA 180 days prior to any planned application of sludge. Although the Respondent did not keep accurate records of its sludge applications, it has acknowledged land applying sludge on several occasions, but has never developed a sludge management plan nor submitted a sludge management plan to EPA.

13. Paragraph 2.f) of Section D of the NPDES permit requires Respondent to submit an "Annual Sludge Summary Report" to EPA by February 19<sup>th</sup> of each year. Respondent failed to submit such a report, failing to do so in the years 2007, 2008, 2009 and 2010.

14. Respondent failed to notify EPA of a Sanitary Sewer Overflow (SSO's) that discharged sewage into a Village street. Such notice is required by paragraphs 6 and 7 of Section D of Standard Conditions incorporated into the permit as "Attachment I".

#### **V. Order for Compliance**

15. 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.

16. Within thirty (30) days of receipt 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.

17. Within thirty (30) days of receipt of this Order, the Respondent shall submit a written report to EPA and a copy to the Indian Health Service (IHS) detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

18. In the event that Respondent believes complete correction of the violations cited herein is not possible within (30) days of receipt of this Order, the Respondent shall, within sixty (60) days from the date of the receipt of this Order, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for elimination of the violations within the shortest time possible, as well as measures to prevent these or similar violations from recurring.

19. If a construction permit is required to achieve compliance with this Order, all documents necessary to obtain such a required construction permit shall be submitted to the State of Nebraska within sixty (60) days from the date of the receipt of this Order.

20. As required, Respondent will report all SSO's or bypasses to EPA Region 7, within 24 hours.

21. Respondent shall send all responses required by this Order to be submitted to the following contacts:

Robert Bryant  
Compliance Officer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Steve Goans  
NPDES Compliance Coordinator  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922

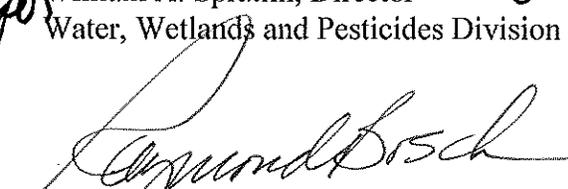
Denny Haag, P.E.  
Indian Health Service  
320 6<sup>th</sup> Street  
Room 212, Room 19  
Sioux City, Iowa 51101-1214

22. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 Act, 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.

23. This Order shall become effective upon the date of receipt by Respondent.

Issued this 14<sup>th</sup> day of June, 2010.

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

  
Raymond Bosch  
Assistant Regional Counsel