

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)
)
The Village of Pender, Nebraska)
Wastewater Treatment Facility)
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)
)
Respondent)
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act, 33 U.S.C.)
§ 1319(a)(3))
_____)

Docket No. CWA-07-2010-0059

FINDINGS OF VIOLATION
AND ORDER FOR COMPLIANCE

I. Statutory Authority

The following 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), and Section 308, 33 U.S.C. § 1318, 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.

1. 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.

2. EPA is the federal agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

II. General Factual Allegations

3. The Village of Pender, Nebraska (hereinafter "Respondent"), a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), owns and operates a Wastewater Treatment Facility ("WWTF").

4. The Pender WWTF is a "point source" that discharges "pollutants" to Logan Creek Dredge, 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.*

5. On or about March 1, 2007, NPDES Permit No. NE0041351 was issued to Respondent by EPA pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit will expire on February 29, 2012.

6. On August 24 and 25, 2009, EPA personnel conducted an inspection of Respondent's WWTF to determine Respondent's compliance with its NPDES permit and the CWA.

III. Findings of Violation

7. Section B of Respondent's NPDES permit, "Description of Discharge Points," specifies that authorized discharges from the WWTF are limited to Outfall 001.

8. The EPA Inspection referenced in Paragraph 6 revealed that the north lagoon cell at Respondent's WWTF had an outfall pipe that discharged wastewater into a manhole. Wastewater from the lagoon's outfall pipe commingles with the facility's effluent downstream from the facility's sampling location and eventually discharges into Logan Creek Dredge. The north lagoon outfall pipe is not Outfall 001, as described in Respondent's NPDES permit, and thus, is an unauthorized discharge point.

9. Section C of Respondent's NPDES permit, "Specific Effluent Limitations and Self-Monitoring Requirements for Outfall 001," requires Respondent to:

- a) calculate and report the quantity of loading for Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS") and nitrogen ammonia as pounds per day;
- b) follow sample collection and analysis procedures outlined at 40 C.F.R. Part 136, including the requirement that holding times for fecal coliform samples not exceed six hours;
- c) meet 85% monthly average removal efficiencies for BOD and TSS;
- d) meet effluent limits for all listed pollutant parameters, including a daily maximum of 8.2 milligrams per day ("mg/L") and a monthly average of 4.1 mg/L for nitrogen ammonia; and
- e) submit Discharge Monitoring Reports ("DMRs") to EPA on a quarterly basis.

8. A review of Respondent's records during the EPA Inspection referenced in Paragraph 6 revealed that:

- a) Between January 2008 and July 2009, Respondent calculated and reported the quantity of loading for BOD and TSS as kilograms per day, not pounds per day, as required by its NPDES permit;
- b) Since March 2009, Respondent has routinely exceeded the six-hour holding time for fecal coliform samples required by its NPDES permit;
- c) Respondent failed to meet the 85% monthly average removal efficiencies for BOD for at least four months in 2008 and 2009 and failed to meet the 85% monthly average removal efficiencies for TSS for at least four months in 2008 and 2009;
- d) Respondent exceeded its NPDES permit limits for nitrogen ammonia in July 2009 with a result of 9.54 mg/L; and
- e) Respondent has failed to provide any DMRs to EPA since June 2008, as required by its NPDES permit.

9. Section D of Respondent's NPDES permit, "Supplemental Conditions," requires Respondent to:

- a) not store sewage sludge at the WWTF for more than two years; and
- b) submit to EPA a Sludge Management Plan and an Annual Sludge Summary Report.

10. The EPA Inspection referenced in Paragraph 6 revealed that:

- a) sewage sludge has been deposited into, and stored in without any removal, the WWTF's lagoon cells for the last 10 years; and
- b) Respondent has never prepared nor submitted to EPA a Sludge Management Plan or Annual Sludge Summary Report.

11. Part II of Respondent's NPDES permit, "Standard Conditions," requires Respondent to:

- a) follow sampling, monitoring, and reporting conditions required by its NPDES permit, which include retention of monitoring records for at least three years and requires Respondent to follow testing procedures outlined in 40 C.F.R. Part 136; and

b) provide notice to EPA for any planned physical alterations or additions to a permitted facility.

12. The EPA Inspection referenced in Paragraph 6 revealed that:

a) Since at least 2007, Respondent failed to follow sampling, monitoring and reporting conditions required by its NPDES permit, including:

i) failure to maintain pH calibration logs;

ii) failure to document sampling activities, including place, date, time, analytical methods used, personnel conducting the sampling and results;

iii) failure to report all contract laboratory data on its DMRs, including records of parameters that are monitored more frequently than is required by the NPDES permit;

iv) failure to maintain its flow measuring device;

v) failure to retain all monitoring records for at least three years

b) Respondent had implemented lagoon upgrades without notifying EPA of any new construction.

13. Section E of the Respondent's NPDES permit, "Schedule of Compliance," requires the Respondent to construct and operate an effluent flow monitoring system by October 31, 2005 and to notify EPA when such system is constructed.

14. During the EPA Inspection, referenced in Paragraph 6, inspectors observed that the required effluent monitoring system had not been constructed.

15. Respondent's NPDES permit violations, as identified in Paragraphs 7 through 14, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

IV. Order for Compliance

16. 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), and Section 308, 33 U.S.C. § 1318, Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

17. Immediately upon receipt of this Order, Respondent shall comply with its NPDES permit and the CWA, which includes, but is not limited to:

- a) limiting discharges to the permitted timeframes outlined in its NPDES permit;
- b) taking whatever corrective actions are necessary to eliminate effluent discharges in excess of NPDES permit limits;
- c) monitoring, sampling and timely reporting of DMRs and other required submissions, including the Annual Sludge Summary Report, to EPA pursuant to Respondent's NPDES permit and conditions outlined in 40 C.F.R. Part 136;
- d) maintaining the integrity of the WWTF lagoon, including mowing, maintenance, and quarterly measurements of the freeboard and wastewater depth of the lagoon; and
- e) constructing and operating an effluent flow monitoring system.

18. Within thirty (30) days of receipt of this Order, Respondent shall submit a written report to EPA describing the specific actions previously taken to correct the violations cited herein, and an explanation of why such actions are anticipated to be sufficient to prevent future recurrence of the cited violations.

19. All reports and notifications herein required shall be submitted to:

Kimberly Willis
Compliance Officer
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

20. *Certification.* Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a 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 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.

V. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

21. Compliance with the terms of this Order for Compliance 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.

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

23. 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 CWA, 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

24. 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

25. 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

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

*In the matter of:
The Village of Pender, Nebraska
Waste Water Treatment Facility
EPA Docket No. CWA-07-2010-0059*

Termination

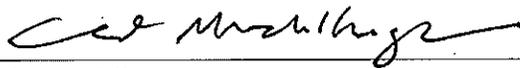
27. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

*In the matter of:
The Village of Pender, Nebraska
Waste Water Treatment Facility
EPA Docket No. CWA-07-2010-0059*

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

for 

William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Chris Muehlberger
Assistant Regional Counsel

*In the matter of:
The Village of Pender, Nebraska
Waste Water Treatment Facility
EPA Docket No. CWA-07-2010-0059*

CERTIFICATE OF SERVICE

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

Mr. Franklin Fendrick
Utilities Superintendent
Pender City Offices
416 Main Street
Pender, Nebraska 68047

5.11.10
Date

Carol M. Welch