

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2020-0012
Broken Bow, Nebraska)	
)	
Respondent)	FINDINGS OF VIOLATION AND
)	ORDER FOR COMPLIANCE ON
)	CONSENT
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 Broken Bow, 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.

Statutory and Regulatory Framework

6. 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.

7. 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.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “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.

9. 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.

10. 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.

11. 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

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

13. Respondent is the owner and/or operator of a POTW in Broken Bow, 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 two sequencing batch reactors (“SBRs”), a two sludge holding ponds, and a UV disinfection system.

14. The WWTF discharges through an outfall to an undesignated tributary of Mud Creek (“Outfall 001”). Mud Creek is a tributary to the South Loup River, which is a tributary to the

Platte River. The undesignated tributary and Mud 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).

15. Mud Creek is impaired by *E. coli*, for which a Total Maximum Daily Load (TMDL) was placed and approved for Mud Creek in May 2012.

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 April 1, 2016, the NDEE issued NPDES permit number NE0027260 to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“NPDES Permit”), effective until March 31, 2021. The NPDES Permit authorizes discharges from the WWTF to the undesignated tributary to Mud Creek subject to conditions and limitations set forth in the Permit.

18. Respondent’s NPDES Permit contains requirements to monitor influent, including flow, and effluent limits, narrative limits

19. On May 30, 2018, NDEE conducted a NPDES Municipal Mechanical Compliance Inspection at the POTW. The NDEE inspection report noted that the mixed wastewater in the east SBR unit appeared to be thin and light in color and that the facility has been unable to comply with ammonia limitations and exceeded *E. coli* limitations. NDEE issued a Notice of Violation to Respondent on June 25, 2018 for the failure to comply with ammonia and *E. coli* limits.

20. On May 13-16, 2019, EPA performed a Compliance Sampling Inspection of the City’s WWTF (“Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

21. 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, and discharge location, and collected influent and effluent samples.

22. 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 for effluent to meet narrative limits, failure to calibrate flow meter, and failure to submit sludge reports to the EPA.

23. The City provided information to the inspector by email on or about May 24, 2019, following the Inspection.

24. A copy of the Inspection Report was sent to the City on or about July 3, 2019. A copy of the revised Inspection Report was sent to the City on or about October 10, 2019.

EPA's Findings

Count 1

Failure to Comply with Effluent Limitations

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

26. 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 1.B, and monthly and maximum geometric mean limits for the recreation season from May through September for *E. coli* in Part 1.C.

27. Part IV.A 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%.

28. 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 in 22 months from September 2016 to May 2019, the City violated the effluent limitations and removal requirements for Outfall 001 set forth in its NPDES Permit as follows:

a. Ammonia

- i. Monthly average mass loading: October 2016, November 2016, December 2016, January 2017, June 2017, July 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, February 2019, and March 2019;
- ii. Daily maximum mass loading: September 2016, October 2016, November 2016, December 2016, January 2017, April 2017, June 2017, July 2017, August 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, October 2018, February 2019, and March 2019;
- iii. Monthly average concentration: October 2016, November 2016, December 2016, January 2017, June 2017, July 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, February 2019, and March 2019;
- iv. Daily maximum concentration: September 2016, October 2016, November 2016, December 2016, January 2017, April 2017, June 2017, July 2017, August 2017, September 2017, October 2017, November 2017, December 2017, January 2018, February 2018, March 2018, October 2018, February 2019, and March 2019.

b. *E. coli*

- i. Monthly geometric mean: July 2017 and September 2017;
- ii. Maximum geometric mean: September 2016, June 2017, July 2017, August 2017, September 2017, June 2018, and May 2019.

- c. 85% Removal Efficiency of CBOD and TSS:
 - i. TSS: January 2017, April 2017, May 2017 and July 2017;
 - ii. CBOD: May 2017, June 2017, and July 2017.

29. 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 Comply with Narrative Limits**

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

31. Part IV.B.2 of Respondent's NPDES Permit requires that discharges shall not contain pollutants at concentrations or levels that produce objectionable films, colors, turbidity, deposits, or noxious odors in the receiving stream or waterway.

32. During the EPA Inspection, the inspector observed three discharges from Outfall 001 into the undesignated tributary to Mud Creek. During each of the discharge, the effluent became very discolored and contained a considerable amount of floating material in it after approximately five minutes.

33. The failure to comply with narrative limits 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 Calibrate Flow Meter**

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

35. Part II of Respondent's NPDES Permit requires influent wastewater to be monitored for flow at the head-works of the WWTF. Standard Condition 19.e of Respondent's NPDES Permit require representative sampling, including, in subpart iv, that flow measurement devices be calibrated and maintained to insure the accuracy of the measurements. In addition, Standard Condition 12 of Respondent's NPDES Permit requires that the permittee retain records of all monitoring information, including calibration records.

36. During the EPA Inspection, facility personnel stated that the flow meter located downstream of the last lift station and upstream of the headworks of the WWTF has not been calibrated.

37. The failure to calibrate the flow meter and retain calibration records 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 Monitor and Report Parameters as Required**

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

39. Part I.A of Respondent's NPDES Permit establishes monitoring requirements for Outfall 001, including monthly average and daily maximum concentration for Total Nitrogen and Total Phosphorous. Standard Condition 14.d of Respondent's NPDES Permit requires monitoring results to be reported on a quarterly basis.

40. Respondent failed to monitor and report for parameters including, but not limited to, Total Phosphorous and Total Nitrogen as required in July 2015.

41. The failure to monitor and report levels of parameters in the discharge of wastewater from Outfall 001 as specified 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 5
Failure to Submit Annual Sludge Reports to EPA**

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

43. Federal regulations at 40 C.F.R. Part 503 and Part III.A of Respondent's NPDES Permit require that the City submit an annual sludge report to EPA by February 19 of each year.

44. The City failed to submit annual sludge reports to the EPA by February 19 in 2016, 2017, and 2018.

45. The failure to submit annual sludge reports to EPA 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

46. 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.

47. In accordance with this Order, the Respondent shall immediately cease all discharges, except discharges 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.

48. *WWTF Assessment/Evaluation.* By no later than thirty (30) days after the effective date of this Order, the City shall retain the services of a qualified engineer or wastewater

specialist to assist the City in identifying and addressing any needed infrastructure, operational and management changes for the WWTF, operator training, or other activities necessary for the WWTF to achieve compliance with the City's Permit. The issues to be considered during this assessment should include, but are not limited to:

- a. Assessment/evaluation of the WWTF to ensure all equipment and facilities are in good repair and functioning appropriately, operational controls are efficient and effective, Operations and Maintenance Manual is current, and operator training is sufficient, to achieve compliance with NPDES permit limitations;
- b. Assessment/evaluation of whether the frequent effluent limit violations and discoloration of the effluent discharge in violation of the narrative limits is caused by improper operation/maintenance of the WWTF, receipt of industrial wastewater from Significant or Categorical Industrial Users, and/or hydraulic overloading and/or other cause(s) as identified; and
- c. Identification of necessary corrective measures.

49. *Compliance Plan.* By no later than one hundred and twenty (120) 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 (the "Compliance Plan") for achieving compliance with the City's NPDES Permit no later than eighteen (18) 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.

50. *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.

51. 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 62 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

52. *Semi-annual Reports.* In addition to the submittals required by Paragraphs 49 and 50, above, the City shall submit to EPA, with a copy to the NDEE, semi-annual reports describing the actions the City has taken to comply with the terms of this Order, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period, any operator training completed, monthly discharge monitoring reports for the period, and notification of any noncompliance with the Permit during the specified period. These reports are due every January 1st and July 1st until certification of compliance plan completion pursuant to Paragraph 50, above.

53. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 56 below, shall be submitted by electronic mail to:

tipton.lantz@epa.gov

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

54. 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 the address provided above.

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

Shelley Schneider
Water Permits Division
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, Nebraska 68509-8922

56. Each submission requirement of this Order shall contain the following certification signed 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

57. 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.

58. 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

59. 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

60. 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

61. 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

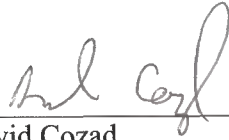
62. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

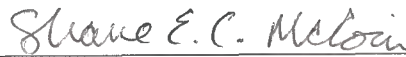
63. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

For the Complainant, U.S. Environmental Protection Agency:

Issued this 17th day of December, 2019.



David Cozad
Director
Enforcement and Compliance Assurance Division



Shane E. C. McCain
Assistant Regional 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 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 sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Jonathon Berghorst
Mayor, Broken Bow
314 South 10th Ave
Broken Bow, Nebraska 68822

and via first class mail to:

Steve Goans
Water Management Division
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, Nebraska 68509-8922

12/20/19
Date

Shane McLois
Signature