

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

07 JAN 22 PM 1:03

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
) Docket No. CWA-07-2007-0013
)
THE CITY OF NEWMAN GROVE,)
NEBRASKA)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
Respondent)
)
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

I. Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of 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 United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA, Region VII and further delegated to the Director of Region VII's Water, Wetlands and Pesticides Division.

2. The City of Newman Grove, Nebraska, (hereafter Respondent or City) owns and operates a publicly owned treatment works (POTW) that treats municipal and industrial wastewater.

II. Statutory and Regulatory Framework

3. 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.

4. 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.

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

6. The Nebraska Department of Environmental Quality (NDEQ) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated September 17, 1973. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

III. Findings of Fact

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

8. The Respondent owns and operates a publicly owned wastewater treatment works (POTW) which receives and treats wastewater from various domestic and industrial sources.

9. The Respondent’s POTW is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

10. The Respondent’s POTW causes the “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

11. The Respondent’s POTW discharges pollutants into Shell Creek, a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

12. Respondent’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. NDEQ issued a NPDES permit, No. NE-0030996, to the Respondent, effective January 1, 2001 for discharges from its POTW into Shell Creek. The NPDES permit expired December 31, 2005. NDEQ sent a letter to the City of Newman Grove dated January 4, 2006, stating that the permit had expired, but in accordance with Title 119, the conditions of the expired permit will remain in force from the expiration date until the effective date of the new permit.

14. On June 19-22, 2006, EPA performed an inspection of the Newman Grove wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). EPA’s inspector documented observations of the operation of City of Newman

Grove's POTW and performed sampling of the POTW's discharge. At the conclusion of the inspection, EPA's inspector left a Notice of Potential Violations with the operator of the POTW. By correspondence dated June 29, 2006, Respondent provided EPA a response to the Notice of Potential Violations.

IV. Findings of Violation

Failure to Comply with Record Keeping Requirements

15. Appendix A(C)(6) of Respondent's NPDES permit contains requirements for Monitoring and Reporting, Recording of Results which require the following information to be kept for each sampling event:

“Record Contents. Records of sampling or monitoring information shall include: (a) the date(s), exact place, time and methods of sampling or measurements; (b) the name(s) of the individual(s) who performed the sampling or measurements; (c) the date(s) the analyses were performed; (d) the individual(s) who performed the analyses; (e) the analytical techniques or methods used; (f) the results of such analyses; and (g) laboratory data, bench sheets and other required information.”

16. The EPA inspection documented that the records required for each sampling event were not kept prior to the June inspection of the facility.

17. Respondent's failure to maintain the required records for each sampling event is a violation of 40 C.F.R. § 122.41(j) and the terms and conditions of Respondent's NPDES permit (Appendix A(C)(6)), and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

Failure to Comply with Sampling Procedure Requirements

18. 40 C.F.R. Part 136.3 Table II and Nebraska Administrative Code, Title 121 Chapter 8, which is incorporated by reference in Respondent's NPDES permit, specifies that pH and DO (dissolved oxygen) determinations be performed immediately after sample collection. Respondent has all its required analyses, including pH and DO, performed by a contract laboratory in Omaha.

19. The EPA inspection revealed that Respondent had been collecting pH and DO samples and sending them by overnight mail to the contract laboratory in Omaha. The time interval involved for transport precludes meeting the requirement for immediate analysis, as referenced in paragraph 18, above.

20. Respondent's failure to comply with the sampling procedure requirements described above is a violation of Respondent's NPDES permit (Appendix A., Section C, Monitoring and Records. Paragraph 1.d.), and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

Effluent Limit Violations

21. Part 1 of Respondent's permit sets the following limits for discharges from outfall #001 to Shell Creek, effective upon issuance. Respondent performs once per month sampling which is reported under the monthly average.

- a. Carbonaceous Biochemical Oxygen Demand (CBOD) shall be limited to a weekly average of 40.0 mg/L and a monthly average of 25.0 mg/L. The mass concentration of CBOD is limited to a weekly average of 9.8 kg/day and a monthly average of 6.1 kg/day.
- b. Total Suspended Solids (TSS) shall be limited to monthly average of 80.0 mg/L and a maximum of 120.0 mg/L. The mass concentration of TSS is limited to a monthly average of 19.6 kg/day and a maximum of 29.4 kg/day.

22. A review of records at the POTW revealed that Respondent's discharge exceeded the permitted limitations for Carbonaceous Biochemical Oxygen Demand (CBOD) as follows:

<u>Date</u>	<u>Limit</u>	<u>Reported Value</u>
March 16, 2005, monthly mass avg.	6.1 kg/day	6.4 kg/day
March 16, 2005, weekly average	40 mg/L	74 mg/L
March 16, 2005, monthly average	25 mg/L	74 mg/L
April 18, 2005, monthly average	25 mg/L	26 mg/L
May 18, 2005, weekly average	40 mg/L	53 mg/L
May 18, 2005, monthly average	25 mg/L	53 mg/L
June 15, 2005, monthly average	25 mg/L	39 mg/L
July 18, 2005, monthly avg.	25 mg/L	31 mg/L
August 15, 2005, monthly average	25 mg/L	36 mg/L
Sept. 19, 2005, monthly average	25 mg/L	37 mg/L
Oct. 18, 2005, monthly average	25 mg/L	38 mg/L
Nov. 15, 2005, monthly average	25 mg/L	37 mg/L
Feb. 22, 2006, monthly mass avg.	6.1 kg/day	8.6 kg/day
Feb. 22, 2006, monthly average	25 mg/L	33 mg/L
March 22, 2006, monthly average	25 mg/L	29 mg/L

April 10, 2006, monthly average	25 mg/L	37 mg/L
May 15, 2006, monthly average	25 mg/L	43 mg/L
May 15, 2006, weekly average	40 mg/L	43 mg/L

23. A review of records at the POTW and sampling performed by EPA on June 20 and 21, 2006, revealed that Respondent's discharge exceeded the permitted limitations for Total Suspended Solids (TSS) as follows:

<u>Date</u>	<u>Limit</u>	<u>Reported Value</u>
May 18, 2005, monthly mass avg.	19.6 kg/day	19.7 kg/day
May 18, 2005, monthly average	80 mg/L	174 mg/L
May 18, 2005, maximum	120 mg/L	174 mg/L
June 15, 2005, monthly average	80 mg/L	106 mg/L
July 18, 2005, monthly average	80 mg/L	123 mg/L
July 18, 2005, maximum	120 mg/L	123 mg/L
August 15, 2005, monthly average	80 mg/L	83 mg/L
October 18, 2005, monthly average	80 mg/L	85 mg/L
November 15, 2005, monthly avg.	80 mg/L	104 mg/L
May 15, 2006, monthly average	80 mg/L	112 mg/L
June 20, 2006, monthly average	80 mg/L	133 mg/L
June 20, 2006, maximum	120/mg/L	133 mg/L
June 21, 2006, monthly average	80 mg/L	121 mg/L
June 21, 2006, maximum	120/mg/L	121 mg/L

V. Order For Compliance

24. 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 in paragraphs 25 through 29.

25. Within thirty (30) days of the effective date 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.

26. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report 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.

27. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, 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 the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

28. Within thirty (30) days of receipt of this Order, Respondent shall submit the following information to EPA with a copy to NDEQ:

- (a) Documentation that all record keeping is performed in accordance with the requirements contained in the Respondent's permit;
- (b) Documentation that all sampling and analyses is performed in accordance with the requirements contained in the Respondent's permit; and
- (c) A copy of the Discharge Monitoring Reports (a copy need not be sent to NDEQ since NDEQ receives the original).

29. For one year from the effective date of this Order, Respondent shall submit to EPA, with a copy to NDEQ, on a quarterly basis, (March 15, June 15, September 15, and December 15) all monthly monitoring and sampling information performed at Respondent's POTW.

Submissions

30. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Cynthia Sans (WWPD-WENF)
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, KS 66101.

31. A copy of documents required to be submitted to NDEQ by this Order, shall be submitted by mail to:

*In the Matter of
The City of Newman Grove, Nebraska*

Donna Garten
Wastewater Section
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922.

VI. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

32. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude 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.

33. 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.

Access and Requests for Information

34. 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

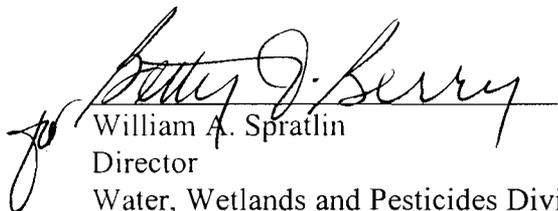
35. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

*In the Matter of
The City of Newman Grove, Nebraska*

Effective Date

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

Issued this 18th day of January, 2007.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101



Sarah Thibos LaBoda
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

*In the Matter of
The City of Newman Grove, Nebraska*

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 to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Honorable Dave Walahoski
City of Newman Grove
P.O. Box 446
Newman Grove, Nebraska 68758

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

Donna Garten
Wastewater Section
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922

1/22/07
Date

Kathy Robinson