

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)
)
Village of Emerson, Nebraska) Docket No. CWA-07-2010-0060
Wastewater Treatment Facility)
)
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))
_____)

I. Statutory Authority

The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE ON CONSENT 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 Emerson, 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") for the Village of Emerson, Nebraska.

4. The Emerson WWTF is a "point source" that discharges "pollutants" to Middle Creek, 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 August 1, 2006, 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 September 30, 2011.

6. Over May 18-21, 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," states that discharge at any location not authorized by the permit is a violation of the Clean Water Act. The permit authorizes discharges from the outfall line that follows the final clarifier to the Outfall pipe to Middle Creek.

8. An unmonitored discharge was observed from the wastewater stabilization pond during the EPA inspection referenced in Paragraph 6. The stabilization pond was observed to have a constructed outfall structure, which had a seep at the wooden blockade. The seep went into a discharge pipe, which discharged into Middle Creek, which is not authorized under Respondent's NPDES permit.

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

- a.) comply with monitoring and reporting requirements for Five Day Biochemical Oxygen Demand ("BOD₅") and Total Suspended Solids ("TSS");
- b.) monitor effluent flow by means of a flow meter;
- c.) collect 24-hour composite samples on the effluent for BOD₅, TSS, and Nitrogen Ammonia ("NH₃ as N");
- d.) meet monthly 85% percent removal efficiencies for TSS;
- e.) not exceed effluent fecal coliform limits; and
- f.) report influent flow in Million Gallons per Day ("MGD").

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

- a.) failed to calculate and report the quantity of loadings for BOD₅ and TSS on the DMR forms from August 2006 through April 2009;
- b.) failed to monitor effluent flow and had not installed a flow meter at the effluent structure;

- c.) failed to collect 24-hour composite samples on the effluent for BOD₅, TSS, and NH₃ as N;
- d.) failed to meet the 85% removal efficiency for TSS for December 2006; May, August and December 2007; and June, August, October, and November 2008;
- e.) exceeded fecal coliform permit limits for June through September 2008; and
- f.) failed to report influent flow in MGD.

11. Section D of Respondent's NPDES permit, "Supplemental Conditions," requires sludge management and reuse/disposal to be in accordance with a Sludge Management Plan (SMP), which must include all information required pursuant to 40 C.F.R. Part 503. Respondent is required to:

- a.) develop and submit a SMP to EPA within 180 days prior to any planned land application;
- b.) provide processes used to significantly reduce pathogens;
- c.) provide a process for record keeping in accordance with 40 C.F.R. § 503.17;
- d.) provide a process or method of meeting vector attraction reduction requirements in accordance with 40 C.F.R. § 503.33;
- e.) sample soil prior to the application of sludge at a new site; and
- f.) submit an Annual Sludge Summary Report to EPA by February 19th of each year.

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

- a.) failed to submit a SMP until February 15, 2008, although it had land applied sludge as early as 2004;
- b.) failed to provide pathogen reduction methods for 2004 to 2007;
- c.) failed to retain complete sludge records for a period of five years;
- d.) failed to provide vector attraction reduction methods for 2004 to 2007;
- e.) failed to conduct soil sampling on its newest land application site; and
- f.) failed to ever submit Annual Sludge Summary Reports to EPA.

13. Section F of Respondent's NPDES permit, "Compliance Schedule," requires Respondent to submit quarterly discharge monitoring reports to EPA.

14. The EPA Inspection referenced in Paragraph 6 revealed that Respondent has failed to submit discharge monitoring reports since June 2008.

15. Section E of Respondent's NPDES permit, "Standard Conditions," requires Respondent to:

- a.) install monitoring and analytical equipment, which shall be calibrated and maintained to ensure accuracy of measurements;
- b.) conduct test procedures for the analysis of pollutants in accordance 40 C.F.R. Part 136, including requirements for sample holding times and properly preserving samples; and
- c.) include in records of field measurements or sampling activities the exact time, place, and date of sampling or measurements; the date of the analysis; the analytical techniques or methods used; the individual(s) who performed the sampling and analyses; and the results of the sampling or analyses.

16. The EPA Inspection referenced in Paragraph 6 revealed that Respondent:

- a.) failed to calibrate the influent flow meter since installation; failed to install the influent flow meter in a turbulent location; and failed to calibrate the influent flow meter;
- b.) exceeded the 15 minute holding time for analyzing pH and dissolved oxygen, did not preserve metals samples with nitric acid to a pH of less than two at least 24-hours prior to analysis, and did not preserve ammonia samples with sulfuric acid to a pH of less than two; and
- c.) failed to include in records the exact time place, and date of sampling or measurements; the date of the analysis; the analytical techniques or methods used; the individual(s) who performed the sampling and analyses; and the results of the sampling or analyses.

17. Respondent's NPDES permit violations, as identified in Paragraphs 7 through 16, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

IV. Order for Compliance on Consent

18. 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 agrees to and is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

19. 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 outfall(s) outlined in your 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; and
- d.) installing and operating an effluent flow monitoring system.

20. Within thirty (30) days of receipt of this Order, Respondent shall submit a written report to EPA describing the specific actions 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.

21. 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.

22. *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 contains 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

23. 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.

24. 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.

25. 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

26. 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.

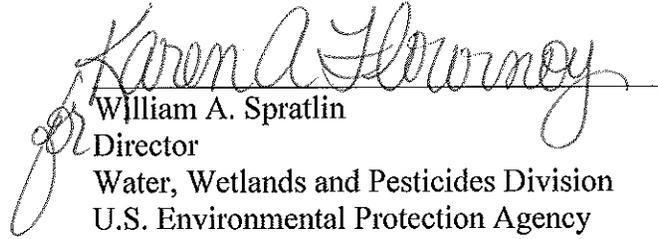
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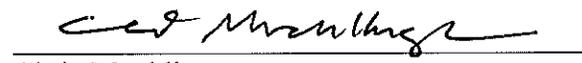
27. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

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

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101


Chris Muehlberger
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

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

Ms. Nancy Mackling, Chairperson
Board of Trustees
Village of Emerson
P.O. Box 339
Emerson, Nebraska 68733

Date

5.10.10

Nancy Mackling