

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

10 MAY 21 AM 10:05
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
THE VILLAGE OF WINNEBAGO) Docket No. CWA-07-2010-0065
WASTEWATER TREATMENT FACILITY)
)
Respondent) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
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 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.

2. Respondent is the Village of Winnebago Wastewater Treatment Facility, who owns and operates a Wastewater Treatment Facility (“WWTF”) for the Village of Winnebago, Nebraska.

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. 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.

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

6. The Village of Winnebago WWTF is a "point source" that discharges "pollutants" to Omaha 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.*

7. 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.

III. FINDINGS OF FACT

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

9. Respondent owns and operates a publicly owned treatment works ("POTW"), as defined by 40 C.F.R. § 403.3(q), which receives and treats wastewater from various domestic and industrial sources.

10. The POTW is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

11. The POTW causes the "discharge of pollutants" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

12. The POTW discharges pollutants into Omaha Creek. Omaha Creek is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

14. On or about August 1, 2006, NPDES Permit No. NE-0113212 was issued to Respondent by EPA pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit will expire on July 31, 2011.

15. On or about April 13, 2009, EPA personnel conducted an inspection of Respondent's WWTF to determine Respondent's compliance with its NPDES permit and the CWA, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

IV. FINDINGS OF VIOLATION

16. The facts stated in Paragraphs 7 through 15 above are herein incorporated.

Effluent Limit Violations

17. Part I. C. of Respondent's NPDES permit prohibits the discharges of floating solids or visible foam other than in trace amounts.

18. On or about February 1-5, 2010, an influent manhole on the north side of cell 1A of Respondent's facility was plugged by debris, resulting in the influent flow to the facility being discharged into Omaha Creek. This discharge contained floating solids in excess of trace amounts.

19. Respondent's discharges are violations of the terms and conditions of the Respondent's NPDES permit, and as such are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Unpermitted Discharge

20. Part I. B of Respondent's NPDES permit authorizes discharges from the outfalls specifically designated as discharge locations. Discharge to any location not authorized under an NPDES permit is a violation of the CWA.

21. Respondent's NPDES Permit authorizes a discharge from Outfalls 001A and 001B, which discharge to the constructed wetland to Omaha Creek and from cell four of the lagoon system to Omaha Creek.

22. The EPA inspection referenced in Paragraph 15 above, revealed that Respondent had been discharging from the south berm of the last lagoon cell, which is not an outfall specifically designated as a discharge location in Respondent's permit.

23. Respondent's discharge is a violation of the terms and conditions of the 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) and § 1342, and implementing regulations.

Failure to Conduct Proper Operation and Maintenance

24. Part I. D of Respondent's NPDES permit requires the Respondent to maintain the facility to ensure the integrity of the components of the treatment system. Attachment I, Part B of Respondent's NPDES permit requires the Respondent to properly operate and maintain all facility and systems of treatment and control (and related appurtenances) that are installed or used by Respondent to achieve compliance with the conditions of Respondent's NPDES permit.

25. On or about February 1-5, 2010, Respondent failed to conduct proper operation and maintenance, specifically, an influent manhole on the north side of cell 1A of Respondent's facility was plugged by debris, resulting in the influent flow to the facility being discharged into Omaha Creek.

26. The EPA inspection referenced in Paragraph 15 above, documented that Respondent failed to conduct proper operation and maintenance of Respondent's WWTF. Specifically, animal burrows, particularly muskrat damage, threatened the integrity of Respondent's WWTF.

27. Respondent's failure to conduct proper operation and maintenance is a violation of the terms and conditions of the 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) and § 1342, and implementing regulations.

Failure to Comply with Reporting Requirements

28. Attachment I, Part D.6 of Respondent's NPDES permit requires Respondent to orally report any noncompliance that may endanger health or the environment as soon as possible, but no later than 24 hours from the time the Respondent becomes aware of the circumstances. The oral report shall be made to the Chief of the Water Enforcement Branch, at phone number (800) 223-0425, or, if after business hours, the EPA spill hotline at (913) 281-0991.

29. On or about February 1-5, 2010, an influent manhole on the north side of cell 1A of Respondent's facility was plugged by debris, resulting in the influent flow to the facility being discharged into Omaha Creek. Respondent failed to notify EPA within 24 hours of becoming aware of this noncompliance.

30. Part I. C of Respondent's NPDES permit requires Respondent to submit quarterly discharge monitoring reports (DMRs) to EPA. In the event no discharge occurs during the quarter, written notification that no discharge has occurred during the quarter shall be submitted to EPA on a quarterly DMR.

31. A review of information submitted to EPA documented that Respondent failed to submit DMRs to EPA from December 2007 to the present.

32. Respondent's failure to comply with reporting requirements is a violation of the terms and conditions of the 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) and § 1342, and implementing regulations.

Failure to Comply with Sampling and Recordkeeping Requirements

33. Part I. C of Respondent's NPDES permit requires the Respondent to collect four

grab samples at least two weeks prior to a scheduled draw down discharge.

34. The EPA inspection referenced in Paragraph 15 above, documented that Respondent has failed to conduct any discharge sampling since at least 2006.

35. Part I. C of Respondent's NPDES permit requires the Respondent to conduct influent monitoring. Attachment I, Standard Conditions, Part C, Monitoring and Records, Section 8, Retention of Records, requires the Respondent to maintain records of all monitoring information for a period of at least three years from the date of the sample.

36. The EPA inspection referenced in Paragraph 15 above, documented that Respondent failed to conduct influent monitoring and to maintain records on site for a minimum of three years from the date of the sample since at least 2006.

37. Part I. C of Respondent's NPDES permit requires the Respondent to comply with the sampling procedure outlined in 40 CFR Part 136.

38. The EPA inspection referenced in Paragraph 15 above, documented that Respondent failed to adhere to proper holding times when collecting fecal coliform and biochemical oxygen demand samples since at least 2006.

39. Respondent's failure to comply with sampling and recordkeeping requirements are violations of the terms and conditions of the Respondent's NPDES permit, and as such are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

40. Respondent's NPDES permit violations, as identified in Paragraphs 17 through 29, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

V. Order for Compliance

41. 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:

42. Immediately upon receipt of this Order, Respondent shall comply with its NPDES permit and the CWA. This shall include, but not be limited to, the following:

a) influent monitoring, pre-discharge sampling, and timely submission of DMRs and other required submissions to EPA pursuant to Respondent's NPDES permit and conditions outlined in 40 C.F.R. Part 136;

b) complying with effluent limitations and discharging as specified in Respondent's

NPDES permit;

- c) maintaining the integrity of the WWTF lagoon, including mowing, maintenance, and repairing any animal burrows or breaches; and
- d) reporting any noncompliance that may endanger health or the environment as soon as possible, but no later than 24 hours from the time the Respondent becomes aware of the circumstances.

43. Within sixty (60) 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.

44. 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.

45. *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.

VI. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

46. Compliance with the terms of this Order 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.

47. Respondent shall comply with all laws, regulations, standards, and requirements, including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

48. 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

49. 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

50. 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.

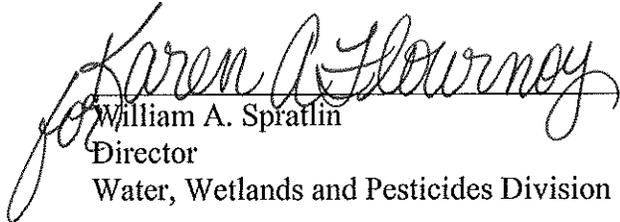
Effective Date

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

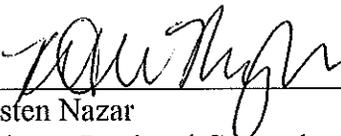
Termination

52. 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.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Kristen Nazar
Assistant Regional Counsel

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:

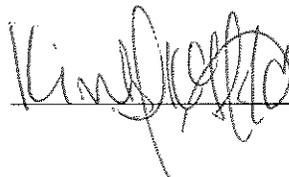
Mr. Rick Huffman
Utilities Director
Village of Winnebago, Nebraska
P.O. Box 683
Winnebago, Nebraska 68071.

With a copy to:

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

MAY 21 2010

Date

A handwritten signature in black ink, appearing to read "Rick Huffman", is written over a horizontal line.