

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	Case No. 3606
)	
CITY OF OGALLALA WASTEWATER)	
TREATMENT FACILITY)	CONSENT ORDER
FID #28050)	
)	
Respondent.)	

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (NDEE) and City of Ogallala, Nebraska (Respondent) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.*; Nebraska Administrative Code (NAC) Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* (Title 119); and NAC Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works* (Title 123).

II. JURISDICTION

2. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, of exercising exclusive general supervision, administration, and enforcement of NEPA and all rules and regulations and orders promulgated under such acts, including Titles 119 and 123.

3. Under NEPA § 81-1504(4), NDEE is further charged with the duty to act as the state water pollution control agency for all purposes of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1251 *et seq.*

4. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations



referenced herein in any action to enforce this Consent Order. Respondent waives its right to further hearing as provided in Neb. Rev. Stat. §81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §84-901 *et seq.* for the violations alleged herein.

III. PARTIES

5. The parties to this Consent Order are NDEE and the City of Ogallala, Nebraska. This Consent Order is binding on NDEE, Respondent, and any successors and assigns.

IV. FINDINGS OF FACT

6. Respondent is the owner and operator of a wastewater treatment facility (WWTF) located at NE ¼, SE ¼, Section 5, Township 013 North, Range 038 West in Keith County, Nebraska.

7. On October 1, 2019, NDEE issued Respondent National Pollution Discharge Elimination System (NPDES) Permit No. NE0040045 (Permit), which, subject to its terms and conditions, authorizes Respondent to collect and treat domestic, commercial, and industrial wastewaters generated in the City of Ogallala and then to discharge treated wastewaters to the South Platte River.

8. The receiving water for Respondent's permitted discharges is Segment SP1-70000 of the South Platte River Basin. Segment SP1-70000 has been identified in NAC Title 117 – *Nebraska Surface Water Quality Standards* as having beneficial uses of primary contact recreation, warmwater aquatic life, agricultural water supply, aesthetic value, and sensitive species habitat.

9. Among the terms and conditions of its NPDES Permit, Respondent is required to meet seasonal numeric limits for the discharge of ammonia to the South Platte River. These

numeric limits are in Part I.B. of the NPDES Permit and consist of both monthly average and daily maximum discharge limits.

10. On January 11, 2022, Respondent submitted a "NPDES & NPP Noncompliance Report Form" notifying NDEE that "[a] skimmer broke loose on a primary clarifier and fell to the bottom. We are draining it to retrieve the skimmer and replace it. The final clarifier is still frozen."

11. Also on January 11, 2022, Respondent submitted a "Numerical Exceedance/Excursion Report" reporting that an ammonia sample taken on that date had been 32.5 mg/L, which was 84% above its daily maximum discharge limit of 17.64 mg/L.

12. On March 2, 2022, NDEE issued Respondent a Letter of Noncompliance (LNC) citing Respondent's failure to comply numeric permit limits for ammonia in violation of Title 119, Chapter 14, 001.01 and failure to comply with facility operation and maintenance requirements in violation of Title 123, Chapter 11, 001.

13. On March 9, 2022, Respondent submitted a "NPDES & NPP Noncompliance Report Form" notifying NDEE that "[a] skimmer broke loose on a primary clarifier and fell to the bottom. We are draining it to retrieve the skimmer and replace it. A skimmer on the other clarifier froze and got caught in the scum box then broke the shear pin. The final skimmers failed to engage and other process changes to the activated sludge system."

14. Also on March 9, 2022, Respondent submitted a "Numerical Exceedance/Excursion Report" which reported that an ammonia sample taken on March 9, 2022 had been 29.3 mg/L, which was 125% above Respondent's daily maximum discharge limit of 13.04 mg/L.

15. Between March 2022 and January 2023, Respondent frequently failed to meet the monthly average and daily maximum ammonia discharge limits of its NPDES Permit.

16. On January 16, 2023, Respondent submitted a "NPDES & NPP Noncompliance Report Form" notifying NDEE that "[t]he recent freeze has caused numerous mechanical failures in both primary and final clarifiers which affected the activated sludge system."

17. Also on January 16, 2023, Respondent submitted a "Numerical Exceedance/Excursion Report" which reported that three (3) ammonia samples taken sometime generally between November 1, 2022 and January 16, 2023, but not identified individually by date, had been 25.8, 20.8, and 33.8 mg/L which were above Respondent's daily maximum discharge limit for ammonia of 17.64 mg/L by 46%, 18% and 92%, respectively.

18. On February 27, 2023, Respondent submitted a "NPDES & NPP Noncompliance Report Form" notifying NDEE that "[w]e are still down 1 primary and 1 final clarifier. The primary clarifier that is operational is having issues emptying the grease pit and the Netzch pump is getting air locked."

19. Also on February 27, 2023, Respondent submitted a "Numerical Exceedance/Excursion Report" which reported that three (3) ammonia samples taken sometime generally between January 17, 2023 and February 27, 2023, but not identified individually by date, had been 34.7, 28.8, and 35.9 mg/L which were above Respondent's daily maximum discharge limit for ammonia of 17.64 mg/L by 97%, 63% and 104%, respectively

20. Neb. Rev. Stat. §81-1506(2)(c) states that it is unlawful for any person to increase in volume or strength any waste in excess of permitted discharges specified under any existing permit.

21. Neb. Rev. Stat. §81-1506(2)(d) states that it is unlawful for any person to operate any facility in a manner that would cause an increase in the discharge of wastes into waters of the state in a manner that is not lawfully authorized.

22. Neb. Rev. Stat. §81-1508.02(1)(b) states that it is unlawful for any person to violate a permit or license condition or limitation and any provision or duty imposed by rules and regulations.

23. Title 119, Chapter 14, 001.01 requires Respondent to comply with all conditions of NPDES Permit No. NE0040045 and states that permit noncompliance is grounds for enforcement action.

24. Title 123, Chapter 11, requires Respondent to maintain its WWTF in proper operating condition and operate its WWTF to meet all NPDES permit requirements and discharge wastewater only within authorized permit limits.

25. Respondent is a "person" as defined in Neb. Rev. Stat. §81-1502(10).

26. Respondent has violated Neb. Rev. Stat. §81-1506(2)(c) and (d); §81-1508.02(1)(b); Title 119, Chapter 14, Section 001.01; and Title 123, Chapter 11, 001.

27. The NDEE Director is authorized under Neb. Rev. Stat. §81-1504(7), (25), and §81-1507(1) to require and enforce compliance schedules to prevent, control, or abate unlawful discharges to waters of the State.

28. The NDEE Director is authorized under Neb. Rev. Stat. §81-1504(30) to require the submittal of plans, specifications, and other information prepared and submitted by a professional engineer licensed to practice in Nebraska.

V. COMPLIANCE ORDER

29. The parties acknowledge and agree that ongoing construction labor and materials shortages continue to complicate and delay WWTF repairs, upgrades, and improvements.

30. Respondent agrees to **immediately**:

- a. continue all available and best efforts to maintain compliance with its NPDES Permit until clarifier repairs are complete; and
- b. continue to sample for all permit parameters and submit timely, accurate, and complete reports to NDEE in accordance with the terms and conditions of its NPDES Permit.

31. By **June 30, 2023**, Respondent agrees to have scheduled and completed a WWTF permit assistance visit (PAV) with the following participants: Ogallala WWTF Superintendent, NDEE wastewater engineering and compliance staff, and a professional engineer licensed in Nebraska representing the City of Ogallala WWTF. The PAV will involve a complete facility walk-through; specific discussion of issues related to cold water operations; and general discussion of WWTF maintenance, operations, and permit compliance.

32. By **July 31, 2023**, Respondent agrees to submit a Statement of Work document for the WWTF Assessment and Engineering Evaluation required by paragraph 35 containing a narrative description of the engineering services and deliverables to be provided to the City of Ogallala in compliance with the terms and conditions of this Consent Order. The Statement of Work document shall be prepared by the professional engineer(s) representing the City of Ogallala WWTF in achieving compliance with this Consent Order.

33. **By August 31, 2023**, NDEE agrees to provide the City of Ogallala and its engineering representative(s) with review comments on the Statement of Work document required by paragraph 32.

34. **By August 31, 2023**, Respondent agrees to complete all clarifier repairs and submit a summary to NDEE of clarifier repair work completed, clarifier parts replaced, and any observations made as to why the parts failed and any steps to be taken to prevent their future failure during cold weather operations.

35. **By October 31, 2023**, Respondent agrees to develop and submit to NDEE a WWTF Assessment and Engineering Evaluation that includes, at a minimum, the following content:

- a. Identification of the causes for failure of the primary and final clarifiers during the winters of 2021-2022 and 2022-2023;
- b. A review, analysis, and summary of all wastewater effluent sampling data and WWTF operating records during the current NPDES Permit term beginning on October 1, 2019, identifying any observable patterns, trends, and relationships;
- c. An inventory and evaluation of all WWTF equipment and treatment stages to identify specific deficiencies and determine whether equipment and treatment stages are in good repair, functioning as designed, and capable of reliable operation during both cold water and warm water conditions;
- d. A review and evaluation of WWTF operator training activities during the current NPDES Permit term, including specific recommendations for additional WWTF staff training and periodic refresher training;

- e. A review of the current Operations and Maintenance Manual to identify and update any outdated information, missing information, or operations and maintenance changes necessary to achieve compliance with NPDES Permit limits, including the addition of both:
 - i. A Standard Operating Procedures (SOP) section for cold water operations that defines WWTF operating parameters during cold water conditions; provides instructions for facility staff to maintain consistent cold water operations in compliance with NPDES permit limits; and evaluates and recommends operational adjustments such as deicing, insulation, supplying hot air, adjusting aeration, bioaugmentation, or other means;
 - ii. A SOP section for warm water operations that defines WWTF operating parameters during warm water conditions and provides instructions for facility staff to maintain consistent warm water operations in compliance with NPDES permit limits;
- f. Identification of the believed causes of the NPDES Permit exceedances during the current NPDES Permit term;
- g. Proposed corrective actions to be taken to achieve and maintain NPDES Permit compliance at Ogallala WWTF, with a timeline for implementation.

36. By November 30, 2023, Respondent agrees to submit an Asset Management Plan that includes, at a minimum, the following content:

- a. a complete inventory of all WWTF equipment including age;
- b. the useful life of all WWTF equipment, both total and remaining;

- c. a timeline for replacement of major equipment; and
- d. cost estimates for major equipment replacement at current costs.

37. Upon NDEE review, comment, and approval of the WWTF Assessment and Engineering Evaluation required by paragraph 35 and the Asset Management Plan required by paragraph 36, Respondent agrees to implement and follow all operating parameters, instructions, procedures, and commitments as contained in these documents and as necessary to comply with NPDES Permit No. NE0040045.

38. Information to be submitted under this Consent Order shall refer to FID # 28050 and shall be sent to:

Hillary Stoll
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

39. Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

VII. RESERVATION OF RIGHTS

40. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEE to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

VIII. NEGATION OF AGENCY RELATIONSHIP

41. Nothing in this Consent Order shall be construed to create, either expressly, or by implication, the relationship of agency between NDEE and Respondent.

IX. AMENDMENT

42. This Consent Order may be modified and amended in writing by mutual agreement of NDEE and Respondent.

X. EFFECTIVE DATE

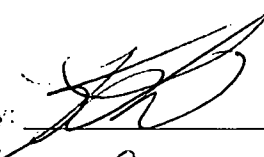
43. This Consent Order shall become effective on the date it is signed by the NDEE Director or his designee.

XI. SEVERABILITY

44. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

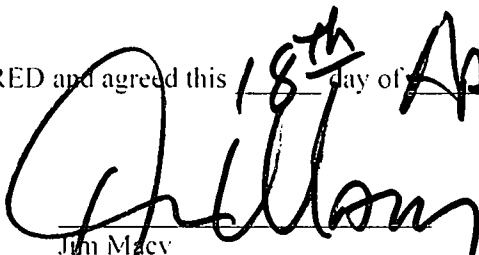
XII. SIGNATURES

45. For Respondent:

By:  KEVIN Wilkins
Title: City Manager
Date: 4/17/2023

46. For NDEE:

IT IS SO ORDERED and agreed this 18th day of April, 2023.


Jim Macy
Director
Nebraska Department of Environment and Energy