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ENVIRONMENTAL PROTECTION AGENCY REGION VII
 REGIONAL HEARING CLERK

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

IN THE MATTER OF)
 KEOKUK, IOWA)
)
)
 415 Blondeau Street)
 Keokuk, Iowa 52632)
)
)
)
 Respondent)
)
)
 Proceedings under Section 309(a)(3))
 of the Clean Water Act,)
 33 U.S.C. § 1319(a))
 _____)

Docket No. CWA-07-2008-0053

FINDINGS OF VIOLATION and
ORDER FOR COMPLIANCE
ON CONSENT

Background and Findings of Violation

Jurisdiction

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE ON CONSENT ("Order") 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).
2. EPA is alleging that the City of Keokuk discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, is the Director of Region 7's Water, Wetlands and Pesticides Division, EPA, Region 7.

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

4. Respondent, the City of Keokuk, Iowa (hereafter "Keokuk"), operates a Publicly Owned Treatment Works ("POTW") in the State of Iowa.

Statutory and Regulatory Framework and Background

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, 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.

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

7. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and EPA's implementing regulations. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Findings of Fact and Findings of Violation

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

9. Keokuk owns and operates a wastewater treatment facility ("WWTF") and nine combined sewer overflow outfalls ("CSOs") from which it discharges pollutants, as defined by CWA Section 502(12), 33 U.S.C. § 1362(12), from "point sources" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

10. Keokuk discharges pollutants from these point sources into Soap Creek and the Mississippi River, which are navigable waters under Section 502(7) of the CWA, 33 U.S.C. 1362(7).

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

12. IDNR granted NPDES permit, EPA No. IA-0042609 (the "Permit"), to Keokuk, effective August 6, 2002. The permit was scheduled to expire August 5, 2007. Keokuk timely applied for reissuance of its permit and IDNR has not yet reissued the permit. Thus, Keokuk's existing NPDES permit has been administratively extended and remains in effect.

13. Keokuk's NPDES permit requires it to submit a Long-Term Control Plan ("LTCP") no later than September 1, 2006. The Permit requires that the LTCP include, *inter alia*, a schedule for implementation of its LTCP.

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

14. EPA alleges that in August 2006, Keokuk submitted a LTCP, marked as "draft," that failed to provide a completion date for the LTCP. EPA alleges that, to date, Keokuk has failed to submit a final LTCP with dates for implementation and completion.

15. EPA finds that the failure of Keokuk to submit a LTCP that meets the requirements set forth in its NPDES permit is a violation of the 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.

16. Keokuk denies that it failed to submit a LTCP as required by its NPDES permit and that it is otherwise in violation of the CWA.

17. Keokuk further provides that, notwithstanding the fact that Keokuk has not yet been issued a CSO Phase II NPDES permit, Keokuk has been implementing sewer separation projects as provided in its submitted draft LTCP. This includes elimination of CSO outfall 012, replacement of the Bank Street lift station and force main, completion of the sewer separation associated with the Grand Avenue & Boulevard Road Project, and completion of the sewer separation project for Bleknapp Place, Belknap Boulevard, McKinley and Timea Street, undertaken at a combined cost of approximately \$2,071,000.

18. Section I.D of the CSO Policy provides for consideration of small systems identified as jurisdictions with populations less than 75,000.

19. Keokuk is a small system under the CSO Policy and may be accorded consideration to the extent allowed under the CSO Policy.

20. One of the provisions of the CSO Policy at 59 Fed. Reg. 18689 is to provide sufficient flexibility to municipalities, especially financially disadvantaged communities, to consider the site-specific nature of CSOs and to determine the most cost-effective means of reducing pollutants and meeting CWA objectives and requirements.

21. One of the provisions of the CSO Policy at 59 Fed. Reg. 18689 is to allow a phased approach to implementation of CSO controls considering a community's financial capability.

22. The segment of the Mississippi River that includes Keokuk's CSOs is designated as primary contact recreation pursuant to Iowa Water Quality Standards.

23. Keokuk asserts that, based on existing data, it is not known whether the remaining CSO's are causing water quality standard exceedances that must be remedied and that a further evaluation on attainable uses and standards compliance is appropriate to identify what further action is necessary to comply with the CSO Policy.

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

24. Keokuk has proposed to undertake a Use Attainability Analysis (UAA). Since that time, Keokuk asserts that it has not received any objections to the UAA from IDNR, and has started the UAA work. Subsequent revisions to Keokuk's LTCP involving CSOs at the outfalls associated with the UAA may be warranted should EPA approve a designated use revision from primary contact recreation to secondary contact recreation.

25. While the facts and underlying merits of the UAA remain to be seen, Keokuk recognizes the potential for a UAA to support a change to a water quality standard consistent with 40 C.F.R. § 131.10(g) and the CSO Policy and, as such, the CSO community may meet applicable water quality standards without any further LTCP activities.

26. Between November 29 and December 2, 2010, EPA conducted an inspection of Respondent's POTW to determine the City's compliance with the CWA and its NPDES permit. The inspection revealed that Respondent has violated the Standard Conditions of its NPDES permit by: (1) failing to operate and maintain the POTW facilities and control systems in good working order, (2) allowing for the intentional diversion of waste streams from Respondent's POTW into waters of the United States, and (3) failing to report to IDNR noncompliance that may endanger human health or the environment within the required time period.

27. EPA finds that the failure of the City to comply with the terms of its NPDES permit and the unauthorized discharges of waste water into waters of the United States are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Agreement of the Parties Concerning Compliance Activities

28. Keokuk and Complainant agree to pay their own costs and attorneys' fees incurred as a result of these actions.

29. Keokuk consents to the issuance of the Order, hereinafter recited, and consents to perform the compliance activities as set forth in this Order.

30. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement.

31. Solely for the purposes of this Order on Consent, Keokuk does not deny the jurisdictional allegations set forth above (except that any allegation of noncompliance is specifically denied).

32. Nothing in this Order shall be deemed an admission of any violations by Keokuk in this or any action including, but not limited to, any subsequent NPDES permitting or enforcement action(s).

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

33. Nothing contained in the Order shall alter or otherwise affect Keokuk's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

34. Nothing in this Order shall alter or otherwise affect the authority of the IDNR, as the NPDES permitting authority, to approve a LTCP submitted by Keokuk and to issue an NPDES permit addressing LTCP matters, with a schedule of activities, in accordance with this Order.

35. Nothing contained in the Order shall alter or otherwise affect EPA's ability to initiate an administrative or judicial enforcement action to recover penalties for any violations of the CWA, including the violations set forth above, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

36. For purposes of this Order, "elimination" of CSOs shall mean physically removing the outfalls; or ensuring sufficient capacity of the sewer system to allow the transfer of all sewage to the WWTF for treatment prior to discharge.

Order for Compliance on Consent

37. Based on the Findings of Fact and Findings of Violation set forth above and, pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Complainant hereby orders and Respondent hereby consents to the following:

38. Keokuk shall undertake the following actions, in compliance with its NPDES permit and the CWA, including the CSO Policy:

a. Submission and Implementation of the LTCP

i. Keokuk shall submit to EPA and IDNR a LTCP that meets the April 19, 1994, Combined Sewer Overflow Control Policy and Keokuk's NPDES permit no later than December 31, 2012. Except as otherwise agreed, the LTCP shall provide for implementation of the activities as set forth in paragraph 38.b, below. Keokuk shall address any comments provided by EPA and/or IDNR with respect to the LTCP.

ii. Any subsequent amendments to the LTCP shall be undertaken in the context of NPDES permitting actions and in accordance with this Order, subject to applicable due process procedures. Notwithstanding any provision to the contrary, nothing herein shall be deemed to require Keokuk to undertake an action that is not otherwise required by its Phase II NPDES permit and/or this Order.

iii. Keokuk shall complete implementation of all requirements under this Order on Consent, including full implementation of Keokuk's LTCP, as soon as practicable, but no later than December 31, 2030.

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

b. Separation and Other Work to be Undertaken

i. By December 31, 2012, separate the sanitary sewer system from the stormwater sewer system such that the following CSOs discharging to Soap Creek are eliminated:

- CSO#004 (Interceptor structure at 7th Street and Soap Creek)
- CSO #005 (Excluding work on the Roquette property adjacent to the Mississippi River)
- CSO#011 (10th Street and Soap Creek)
- CSO #012

ii. By December 31, 2014, separate the sanitary sewer system from the stormwater sewer system such that the following CSO discharging to Soap Creek is eliminated:

- CSO #005 (Excluding work on the Roquette property adjacent to the Mississippi River) (Interceptor structure at 5th Street and Soap Creek).

iii. By December 31, 2015, separate the sanitary sewer system from the stormwater sewer system at Victory Park.

c. Reporting

i. By April 15 of each year, Keokuk shall submit progress reports to EPA and IDNR describing the CSO work performed during the previous April 1 through March 31 time period and, include a projection of the work to be performed during the next April 1 through March 31 time period.

d. Submission of Sewer System Evaluation Survey and Capacity Assessment Report

i. By July 1, 2013 ^{T.D.M.} the City shall conduct a Sewer System Evaluation Survey and Capacity Assessment ("SSES") and submit a report to EPA for review and approval. The SSES will identify sewersheds with excessive inflow and infiltration ("I/I"), identify and quantify sources of excessive I/I, identify and quantify SSOs, identify areas subject to Building Backups, identify cross connections and unauthorized connections, and identify physical degradation of the POTW that causes or contributes to SSOs or Building/Private Property Backups. The SSES report shall describe data management and review, quality control/quality assurance, and rainfall and flow monitoring. In the report, the City shall also provide recommendations for POTW upgrades, including projected completion dates, based on the SSES findings.

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

ii. The City shall perform the SSES in accordance with the guidance provided in the appropriate sections of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994; and *A Guide to Short Term Flow Surveys of Sewer Systems*, WRC Engineering (Undated); and sound engineering practices.

e. Submission of Collection System Management, Operation and Maintenance Program

i. By July 1, 2011, the City shall submit to EPA for review and approval a Collection System Management, Operation and Maintenance (MOM) Program. The MOM program shall be designed to:

1. Minimize the possibility of SSOs from the City's collection system through adequate staffing, training and resources sufficient to minimize infiltration, inflow, and exfiltration from the system, and maximize conveyance of wastewater to the treatment plant;
2. Implement an immediate response program to ensure quick mitigation of all SSOs, including Building Backups (unless caused by blockage in the homeowner's lateral connection); and
3. Continuously prioritize areas of the collection system that need to be addressed via short term and long term solutions based in part on consideration of the frequency of SSOs and problems identified in specific areas of the collection system.

ii. The City shall develop the MOM program in accordance with the guidance provided in the appropriate sections of the *Guide for Evaluating CMOM Programs at Wastewater Collection Systems*, EPA 305-B-05-002, 2005, and sound engineering practices.

Submissions

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

Jodi Bruno (or designate)
Water Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

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

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

Dennis Ostwinkle (or designate)
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353-1623.

Certification

41. All submissions made by Respondent to EPA and IDNR pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

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 submissions of false information.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

42. Compliance with the terms of this Order shall not relieve Keokuk of liability for the violations identified in this Order, or preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA including the violations set forth above, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

43. 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 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 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

44. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Keokuk's facilities, and/or to request additional information from Keokuk, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

Severability

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

Modification

46. Extension: In the event Keokuk seeks an extension of any of the dates for completion of the LTCP activities required in paragraph 38 above, Keokuk shall provide EPA with a written submission requesting modification of the schedule contained in the Order as soon as is reasonably practicable. There shall be no material modification of this Order without written approval by EPA. EPA shall respond to such request in good faith. Any request for modification by Keokuk shall not relieve Keokuk of its obligations pursuant to its NPDES permit, the CWA and this Order, and Keokuk shall continue with timely implementation of the LTCP until EPA rules on any request for modification. A copy of any extension request shall be provided to IDNR.

47. Modification: In the event that Keokuk seeks a modification to its LTCP based on, but not limited to, changes in water quality standards with respect to the receiving waters of Keokuk's POTW, Keokuk shall provide EPA and IDNR with a written submission requesting modification of the LTCP. There shall be no material modification of the LTCP without written approval by EPA and IDNR. Any material modification of the schedule shall be undertaken in the context of an NPDES permitting action. EPA reserves its rights to object to any LTCP change to the extent inconsistent with applicable law. Any request for modification by Keokuk shall not relieve Keokuk of its obligations described in paragraph 38 or compliance with Keokuk's NPDES permit and the CWA.

Termination

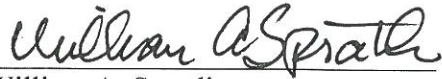
48. This Order shall remain in effect until (a) Keokuk has complied with all conditions under this Order or (b) a written notice of termination is issued by an authorized representative of EPA, whichever occurs first. Such notice shall not be given until all of the requirements of this Order have been met.

Effective Date

49. This Order shall be effective upon filing with EPA's Regional Hearing Clerk, as demonstrated by the date stamp printed on page 1 of the Order. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

Issued this 30 day of Dec. 2010.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Chris Muehlberger
Assistant Regional Counsel

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

FOR RESPONDENT:
KEOKUK:

Thomas D. Marion

Tom Marion
Mayor, City of Keokuk

December 30, 2010

Date

In the matter of:
Keokuk, Iowa
Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2008-0053

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 Order for Compliance on Consent 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 Findings of Violation and Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Tom Marion
Mayor, Keokuk
415 Blondeau Street
Keokuk, Iowa 52632

John C. Hall
Gary B. Cohen
Hall & Associates
1101 15th Street, N.W.
Suite 203
Washington, D.C. 20005

Dennis Ostwinkle
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353-1623

12.30.10
Date