

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

11 AUG -6 AM 8:22

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

) Docket No. CWA-07-2011-0077

) THE CITY OF OXFORD, IOWA,)

) FINDINGS OF VIOLATION and)
) ORDER FOR COMPLIANCE)

) Respondent,)

) Proceedings under Section 309(a)(3))
) of the Clean Water Act,)
) 33 U.S.C. § 1319(a))
)

Preliminary Statement

1. The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE 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), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent, the city of Oxford, Iowa (hereafter “Respondent” or “City”), operates a Publicly Owned Treatment Works (“POTW”) in the state of Iowa that treats domestic wastewater.

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. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, device and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

7. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System (“NPDES”) program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

Findings of Fact

8. The City is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.

10. The City’s POTW discharges to Rhine Creek, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

11. The City’s POTW is a “point source” that “discharges pollutants” into “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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. IDNR granted NPDES Permit No. IA-32531 to Respondent for discharges from its POTW to Rhine Creek. The permit became effective May 28, 2001, with an expiration date of May 27, 2006. The 2001 NPDES permit has been administratively extended by IDNR.

14. The 2001 NPDES permit states that the City’s wastewater treatment facility, which discharges through Outfall 001, has an annual average daily flow of 96,000 gallons per day (“gpd”), a design average daily wet weather flow of 239,000 gpd and a design maximum daily wet weather flow of 263,000 gpd. The City’s wastewater treatment facility experienced an average flow of 208,000 gpd from May through December 2008, 290,000 gpd in 2009 and 266,000 gpd in 2010.

15. On November 15-18, 2010, an EPA representative performed a Compliance Sampling Inspection (hereafter “the EPA inspection”) of the City’s wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City’s compliance with its NPDES permit and the CWA.

16. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City’s records related to the 2001 NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges. The EPA inspector’s observations included, but were not limited to:

- a. numerous instances of noncompliance with the effluent limitations contained in the 2001 NPDES permit;
- b. identification by the City of significant infiltration and inflow (“I&I”)

17. On May 2, 2011, EPA received a response from the City to a request for information

(hereafter "EPA Information Request") issued by EPA to the City on April 11, 2011, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

Findings of Violation

18. The facts stated in Paragraphs 8 through 17, above, are herein incorporated.

Count I

19. The Effluent Limitations section of the City's NPDES permit established limitations for Outfall 001, discharge from the wastewater treatment facility, including the following:

- a. total suspended solids ("TSS") – weekly average concentration limitation of 45 mg/L, 30 day average concentration limitation of 30. mg/L, weekly average mass limitation of 90 lbs per day, 30 day average mass limitation of 60 lbs per day, and compliance with a removal efficiency of 85%;
- b. Ammonia (NH-3)-daily maximum concentration limitation of 13 mg/L for the Months of January and February, a daily maximum concentration limitation of 5.8 mg/L for the Months of March-June and September-December, a daily maximum concentration limitation of 5.6 mg/L for the Months of July-August, a daily mass limitation of 11 lbs per day for the Months of March-June and September-December, a daily mass limitation of 9.90 lbs per day for the Months of July-August, a 30 day average mass limitation of 6.4 lbs per day for the Months of March-June and September-December, and a 30 day average mass limitation of 6.0 lbs per day for the Months of July-August.

20. The EPA inspection and a review of information provided by the City in response to EPA's Information Request revealed that the City has exceeded its NPDES permit concentration and mass limitations for TSS, and, and has failed to meet the removal efficiencies for TSS, including the following:

- a. TSS
 - i. the City exceeded the 30 day average concentration NPDES permit limitation for TSS during the months of September 2008, October 2008, November 2008, January 2009, March 2009, May 2009, October 2009, November 2009, December 2009, April 2010, July 2010, February 2011 and March 2011;

- ii. the City exceeded the seven day average concentration NPDES permit limitation for TSS during the months of October 2008, November 2008, March 2009, May 2009, October 2009, November 2009, December 2009, April 2010 and March 2011;
- iii. the City exceeded the 30-day average mass NPDES permit limitation for TSS during the months of September 2008, October 2008, November 2008, March 2009, May 2009, October 2009, November 2009, December 2009, April 2010, May 2010, July 2010, August 2010, and March 2011;
- iv. the City exceeded the seven day average mass NPDES permit limitation for TSS during the months of November 2008, March 2009, May 2009, October 2009, December 2009 and March 2011;

b. Ammonia

- i. the City exceeded the daily maximum NPDES permit limitation for Ammonia during the months of May 2008, June 2008, March 2009, December 2010 and March 2011.
- ii. the City exceeded the monthly average NPDES permit limitation for Ammonia during the months of June 2008, March 2009, April 2009, December 2010, January 2011 and March 2011.

21. The City's failure to comply with the effluent limitations is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count II

22. Condition #8 of the Standard Conditions section of the City's NPDES permit, titled "Proper Operation and Maintenance," requires all facilities and control systems to be operated as efficiently as possible and maintained in good working order.

23. The proper operations and maintenance requirements are set forth at 40 C.F.R. § 122.41(e).

24. The EPA inspection revealed that the City failed to properly operate and maintain the wastewater treatment facility by:

- a. failing to address significant infiltration and inflow ("I&I") in the collection system that has contributed to the numerous exceedences of the effluent limitations found in the City's NPDES permit.

25. The City's failure to properly operate and maintain the wastewater treatment facility is a violation of 40 C.F.R. § 122.41(e) and the terms and conditions of the City's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order for Compliance

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:

26. Immediately upon the Effective Date of this Order, Respondent shall take whatever actions are 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.

27. *Comprehensive Compliance Plan - Effluent Limitations and I&I.* Within 90 days of the effective date of the Order, the City shall submit to EPA, with a copy to IDNR, a comprehensive written plan that shall describe in detail the specific actions to be taken or work to be completed, and why such actions or work are sufficient to ensure long-term compliance with the City's NPDES Permit. The Compliance Plan shall include a detailed schedule for the proposed actions/work; all such actions/work shall be completed as soon as practicable. EPA will review and may provide comments on the City's Compliance Plan. The Compliance Plan shall:

- a. Include a summary of the work to date in addressing I/I and a schedule for performing and completing the remainder of the work as expeditious as possible;
- b. Include a POTW Remedial Measures Plan that will identify measures sufficient to result in adequate Capacity at its POTW, such that overloading at the WWTP, and WWTP NPDES permit noncompliance will be eliminated under current and future conditions;
- c. The POTW Remedial Measures Plan shall ensure that the peak flow capacity of the POTW is sufficient to treat the peak flow transported by the collection system. If the peak flow capacity of the POTW is insufficient to treat the predicted flow then remedial measures to increase peak flow capacity at the POTW shall be included in the remedial measures specified;
- d. The POTW Remedial Measures Plans shall include schedules that are as expeditious as possible for design, construction, and placement in service of all proposed measures. The schedules shall include the initial design, complete design, complete permitting, award contract, initial construction, and complete construction dates for each measure proposed.

28. After review of the information submitted by Respondent pursuant to the above Paragraph, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

29. The City shall at all times comply with requirements established by the State of Iowa regarding the repair, construction, and operation of facilities associated with the City's POTW, including, but not limited to, any requirements for work to be performed by Iowa licensed professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable state requirements.

Submissions

30. *Reporting to EPA and IDNR:* The City shall submit to EPA, with a copy to IDNR, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every January 28 and July 28 until termination of this Order pursuant to Paragraph 39 below; the first report is due January 28, 2012. The City's report shall include, at a minimum:

- a. Compliance Plan updates. Each report shall provide a detailed update regarding the City's implementation of its Compliance Plan, including a description of work completed and milestones met during the previous period; and
- b. Monthly Discharge Monitoring Reports. Each report shall include a copy of that reporting period's Discharge Monitoring Reports.

31. All submissions by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify that the City of Oxford has complied with all the applicable requirements of the Order for Compliance. I also 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.

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

Wayne Dillard
Environmental Engineer
Water Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

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

Dennis Ostwinkle
Iowa Department of Natural Resources, Field Office #6
1023 West Madison
Washington, Iowa 52353-1623.

General Provisions

Effect of Compliance with the Terms of this Order

34. 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.

35. 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

36. 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

37. 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.

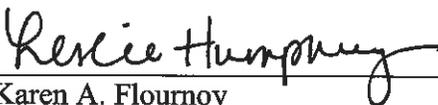
Effective Date

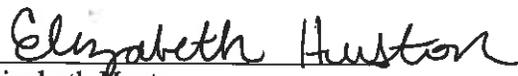
38. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

39. 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.

Issued this 3rd day of August, 2011.


for Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division


Elizabeth Huston
Assistant Regional Counsel
Office of Regional Counsel

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 Docket 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 Donald Saxton
Mayor, City of Oxford
136 East Wilson Street
Oxford, Iowa 52322

and by first class mail to:

Dennis Ostwinkle
Iowa Department of Natural Resources, Field Office #6
1023 West Madison
Washington, Iowa 52353-1623.

AUG 04 2011

Date

