

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	Docket No. CWA-07-2015-0045
SHENANDOAH, IOWA (CITY OF))	
)	
Respondent,)	FINDINGS OF VIOLATION AND
)	ADMINISTRATIVE ORDER FOR
)	COMPLIANCE ON CONSENT
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. §1319(a)(3))	
_____)	

Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division of EPA, Region 7.

2. Respondent is the City of Shenandoah, Iowa (“City” or “Respondent”), a municipality chartered under the laws of the state of Iowa (“Iowa”). Respondent is the owner and/or operator of a Publicly Owned Treatment Works, as defined by 40 C.F.R. § 403.3(q), located in Shenandoah, Fremont County, Iowa.

3. The EPA, together with the City, enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.”

4. The EPA and the City (collectively referred to herein as the “Parties”) have negotiated in good faith and have reached a settlement of the issues in this Order.

5. It is the Parties’ intent, through entering into this Order, to achieve compliance by the City with its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the City to attain compliance with the CWA and its NPDES permit, and that this settlement is fair, reasonable, and in the public interest.

6. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. For the purposes of this Order, Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

7. Respondent neither admits nor denies the factual allegations contained in this Order on Consent, except the Respondent admits the jurisdictional allegations herein.

Statutory and Regulatory Framework

8. 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, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

9. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section. To implement Section 402 of the CWA, EPA promulgated regulations thereunder, including 40 CFR 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.

10. 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, the implementing regulations, and a Memorandum of Understanding. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

11. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

EPA's General Allegations

12. The City of Shenandoah is a "person" for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

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

14. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources. The POTW includes a wastewater collection system and a sewage treatment plant (“STP”), which includes two covered trickling filters and various clarifying and holding cells, located to the northwest of the City off Old Hwy 2 at 190th Street.

15. The City’s POTW discharges to the Johnson Run Drainage Ditch, then to the East Nishnabotna River, which are each “navigable waters” and “waters of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

16. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

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

18. The City’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. The IDNR issued NPDES Permit No. IA-0032328 (hereafter “Permit”) to the City for discharges from its POTW. The Permit became effective September 10, 2002, with an expiration date of September 9, 2007. The IDNR has administratively continued the permit.

20. Respondent’s Permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the Permit as “Outfall 001” for the discharges from a trickling filter wastewater treatment facility and as Outfall 002” for the discharge to a golf course pond used for irrigation, each subject to the effluent limitations and conditions set forth in the Permit.

21. Respondent’s Permit sets effluent limitations at Outfall 001 for pollutants, including Five-day Carbonaceous Biological Oxygen Demand (“CBOD₅”), Total Suspended Solids (“TSS”), Ammonia Nitrogen, and pH, and requires once or twice weekly monitoring for these parameters.

22. Respondent’s Permit sets effluent limitations at Outfall 002 requiring a minimum concentration level and contact time for Total Residual Chlorine, ensuring adequate disinfection before irrigation of the golf course.

23. On May 5 through 8, 2014, an EPA representative performed a Compliance Sampling Inspection (hereafter “the EPA inspection”) of the City’s POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City’s compliance with its Permit and the CWA.

24. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the Permit, including Monthly Operating Reports ("MORs") from January 2011 through March 2014, and observed the STP, collection system, contributing industrial users and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations regarding the City's POTW for the period from 2009 through the date of the EPA inspection included, but were not limited to:

- a. Discharges of effluent in violation of its Permit limitations on at least 41 occasions; and
- b. Characteristics of and circumstances at the POTW, including, a discharge from Green Plains Energy, a local industry, through Outfall 001 that was connected after the POTW's treatment facilities but before effluent sampling by the City; a collapsed cover on one of the STP's two Biosolids digested that the City reported occurred in 2009; and accumulation of lime sludges from the City's drinking water treatment plant in the primary clarifier, equalization basin and digesters leading to reduced treatment capacity.

25. At the conclusion of the Inspection, the EPA inspector provided the City a Notice of Potential NPDES Permit Violations (referred to as an "NOPV"), which described the inspector's preliminary observations regarding potential violations, including, but not limited to, effluent limit exceedances, sample collection and analysis deficiencies, and operation and maintenance deficiencies.

26. By letter dated May 15, 2014, the City provided additional information to the EPA inspector regarding the matters identified in the NOPV. The City's letter indicated the sampling and analysis deficiencies had been corrected and the City was considering options to correct other deficiencies.

27. By letter dated October 16, 2014, the EPA sent to the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

28. By letters dated November 21 and December 12, 2014, the City responded to EPA's Request for Information and provided documentation and responses to questions, including information related to monitoring results for the STP's influent and effluent. Additionally, the City informed EPA that it had begun construction of a new water treatment plant that would eliminate the discharge of lime sludge to the SWP, but that the City had encountered unanticipated delays due to circumstances beyond its control.

EPA's Findings of Violation

29. The facts stated in Paragraphs 12 through 28, above, are herein incorporated.

30. Based on observations documented during the EPA inspection, review of information provided by the City in response to the EPA's NOPV and Request for Information, and review of other information reportable by the City pursuant to its Permits, the EPA finds that the

Respondent has violated the terms and conditions of its Permit, including, but not limited to, the following.

- a. *CBOD₅*: discharging effluent during the 35 months between August 2011 and August 2014 exceeding the weekly average concentration limits six times, the monthly average concentration limits four times, and the weekly and monthly average mass limits one time each;
- b. *TSS*: discharging effluent during the 35 months between August 2011 and August 2014 exceeding the weekly average concentration limits six times, and the monthly average concentration limits nine times;
- c. *Ammonia*: discharging effluent during the 35 months between August 2011 and August 2014 exceeding the monthly average concentration limits seven times, and the daily maximum concentration limits five times; and
- d. *TRC*: irrigating effluent during the 35 months between August 2011 and August 2014 failing to meet the minimum TRC concentration on two occasions as required by the Permit.

31. The EPA finds that each of Respondent's violations described in Paragraphs 30, above, is a violation of the terms and conditions of its Permit issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Reasonable Time to Achieve Compliance

32. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that twenty-four (24) months is a reasonable time for Respondent to complete work necessary to eliminate the discharge of water treatment plant lime solids to the wastewater treatment plan and comply with applicable terms and conditions of its Permit.

Order for Compliance on Consent

33. Based on the EPA FINDINGS set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES to take, the actions described below.

34. In accordance with this Order on Consent, the City shall take necessary actions to comply with the conditions and limitations of its Permit.

35. *Permit Compliance Measures related to Water Treatment Plant Solids*: As soon as practicable, but no later than twenty-four (24) months after entry of this Order on Consent, unless extended by the EPA in writing pursuant to Paragraph 46 below, the City shall complete construction of its new water treatment plant and its associated solids handling facilities in order

to discontinue introduction of water treatment plant lime solids to the STP and achieve compliance with applicable terms and conditions of its Permit. Such measures shall include, but not be limited to, the following actions:

- a. Within ninety (90) days of the effective date of this Order, the City shall submit to the EPA, with a copy to IDNR, a description and schedule, including interim milestones, of the actions required to complete construction of the water treatment plant and eliminate discharges of lime sludge to the STP;
- b. The City shall remove accumulated solids from its STP holding tanks by no later than December 15, 2015;
- c. The City shall inform the EPA and IDNR in writing if any new information or circumstances cause the City to modify any planned actions or schedule for achieving compliance with this Order and may, if appropriate, petition for an extension of the compliance deadline pursuant to Paragraph 46 of this Order; and
- d. Upon completion of the corrective actions described above, the City shall submit a written report and a certification stating that the City has completed all necessary action to eliminate discharges of lime sludge from the water treatment plant to the STP.

36. 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 certified or 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.

Reporting

37. *Reporting to EPA and IDNR:* In addition to the submittals required by Paragraph 35 above, 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 48 below; the first report is due January 28, 2016. Each report shall include, at a minimum:

- a. A listing of Permit violations, if any, that occurred during the reporting period and a description of actions taken by the City to mitigate and minimize or prevent future recurrences of such violations;
- b. A detailed update on the progress of the work required by this Order, including a description of activities completed and milestones met during the reporting period, a description of actions scheduled for the next reporting period, and a statement regarding any challenges encountered and/or expected with respect to completion of the work required by this Order; and

- c. For submittal to the EPA only, a copy of that reporting period's Monthly Operating Reports ("MORs"). The City shall submit MORs to IDNR as required by its Permit.

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

Jodi Bruno, or her successor
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

Ted Petersen, or his successor
Environmental Program Supervisor
Iowa Department of Natural Resources
7900 Hickman Rd, Suite 200
Windsor Heights, Iowa 50324-4432.

General Provisions

40. Failure to comply with the terms of the Section 309(a)(3) Compliance Order may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that you have violated the Act and failed to comply with the terms of the Order.

Reservation of Rights

41. 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. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

42. With respect to matters not addressed in this Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and/or other legal remedies allowed by law.

43. 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.

Access and Requests for Information

44. 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

45. 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.

Modification

46. Upon written request by Respondent, at EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by EPA by written notice to Respondent, without further formal amendment to the Order. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Effective Date

47. 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

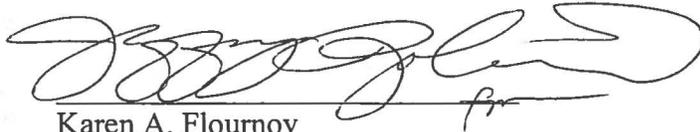
48. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

Signatories

49. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this 24th day of June, 2015.



Karen A. Flourney
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Shenandoah, Iowa:

Richard N. Hunt
Signature

June 15, 2015
Date

Richard N. Hunt
Name

Mayor
Title

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, 11201 Renner Boulevard, Lenexa, Kansas 66219.

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 Richard N. Hunt
Mayor, Shenandoah
500 W. Clarinda Avenue
Shenandoah, Iowa 51601

and by first class mail to:

Ted Petersen, or his successor
Environmental Program Supervisor
Iowa Department of Natural Resources
7900 Hickman Rd, Suite 200
Windsor Heights, IA 50324-4432.

6/25/15
Date

Clarah A. Moreno