

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2015-0067
THE CITY OF ALBIA, IOWA)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a) of the)	
Clean Water Act, 33 U.S.C. § 1319(a))	
_____)	

Preliminary Statement

1. This Administrative Order for Compliance on Consent (“Order on Consent”) is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the City of Albia, Iowa (“Respondent” or “City”), a municipality chartered under the laws of the State of Iowa (“Iowa”). Respondent is the owner and/or operator of the Publicly Owned Treatment Works (“POTW”), located in Monroe 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. It is the Parties’ intent, through entering into this Order, to address noncompliance by the City in violation of 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.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent. Respondent also 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 on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

8. The Iowa Department of Natural Resources (“IDNR”) is the 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 EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

EPA’s General Allegations

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

10. 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, various pump stations and a three-cell wastewater treatment lagoon consisting of two aerated cells operated in series followed by one facultative cell, which is located on the northern outskirts of Albia, Iowa in Section 15, Township 72 North, Range 17 West.

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

12. 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.

13. 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.

14. The IDNR issued NPDES Permit No. IA-0036871 to the City for discharges from its POTW to Miller Creek. The permit became effective February 24, 2004 with an expiration date

of February 23, 2009. The City filed a timely application for reissuance of NPDES Permit No. IA-0036871, which has been administratively extended.

15. On June 16 – 19, 2014, an EPA representative performed a Compliance Sampling Inspection (hereafter “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 NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges. The EPA inspector’s observations regarding the City’s POTW for the period from 2011 through the date of the EPA inspection included, but were not limited to:

- a. Discharges of effluent in violation of its NPDES permit limitations on numerous occasions;
- b. Failure to provide accurate effluent concentrations on the Monthly Operation Reports (“MORs”);
- c. Influent flow in excess of the treatment facility design capacity; and
- d. Improper sample collection and maintenance of monitoring and equipment calibration records.

17. On November 24, 2014, EPA issued the Facility an Information Request pursuant to Section 308 of the CWA. On December 12, 2014, January 12, 2015 and February 10, 2015, the Facility responded to such request.

EPA’s Specific Allegations

18. The facts stated in Paragraphs 1 through 17, above, are herein incorporated.

Count 1

Failure to Comply with Effluent Limitations

19. The Effluent Limitations and Monitoring Requirements section of the City’s NPDES permit establishes effluent limitations for Outfall 001, including the following:

- a. CBOD₅ – weekly average concentration of 40.0 mg/L and mass of 273.0 lbs/day, monthly concentration average of 25.0 mg/L and mass of 170.0 lbs/day, and removal efficiency of 85%;
- b. TSS – weekly average concentration of 120.0 mg/L and mass of 818.0 lbs/day, monthly average concentration of 80.0 mg/L and mass of 546.0 lbs/day;

- c. pH – maintained at or above 6.0 and below 9.0 pH units; and
- d. Ammonia as N – daily maximum concentration of 11.0 to 70.0 mg/L and mass of 75.0 to 479.0 lbs/day varying by month, monthly average concentration of 11.0 to 30.0 mg/L and mass of 75.0 to 202.0 lbs/day varying by month.

20. The EPA inspection, review of the City's monthly monitoring reports submitted to IDNR, review of the City's contract laboratory reports and review of the City's responses to the Section 308 Information Request identified that between February 2011 and November 2014, the City violated the effluent limitations of its NPDES permit 53 times as follows:

- a. The City failed to demonstrate compliance with the required 85% removal of CBOD₅ in 7 different months from April 2011 through March 2014;
- b. The City exceeded the permitted maximum daily ammonia concentration 28 times from August 2011 through August 2014;
- c. The City exceeded the permitted monthly average ammonia concentration 9 times from August 2011 through June 2014;
- d. The City exceeded the permitted maximum daily ammonia mass 6 times from May 2011 through May 2014; and
- e. The City exceeded the permitted monthly average ammonia mass in June 2011, April 2014 and June 2014.

21. The City's failure to comply with the City's NPDES permit effluent limitations as described above, is a violation of the terms and conditions of a 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 2
Failure to Correctly Report Monitoring Data**

22. Standard Condition 23 of the City's NPDES stipulates that analyses of wastewater required to be submitted to IDNR be performed by a laboratory certified by the State of Iowa.

23. The EPA inspection, review of the City's monthly monitoring reports submitted to IDNR, review of the City's contract laboratory reports and review of the City's responses to the Section 308 Information Request identified the City incorrectly reported data from laboratory reports of analyses of wastewater conducted for the City by Midwest Environmental Services, Inc., on the Monthly Operation Reports ("MORs") submitted to IDNR a total of nine times between November 2011 and February 2014, as follows:

- a. Effluent CBOD₅ concentrations reported on the MORs for samples collected on November 2, 2011, November 9, 2011, November 15, 2011, December 28, 2011, January 4, 2012 and February 2, 2014 were less than the concentrations reported on the laboratory reports for those samples;
- b. Effluent TSS concentrations reported on the MORs for samples collected on May 2, 2012 and June 13, 2012 were less than the concentrations reported on the laboratory reports for those samples; and
- c. Effluent Ammonia as N concentration reported on the MOR for the sample collected on June 26, 2013 was less than the concentration reported on the laboratory report for that sample.

24. The City's failure to properly report effluent concentrations as described above, is a violation of the terms and conditions of a 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 3
Exceeding the Design Capacity of the Treatment Plant**

25. The Design Capacity requirements of the City's NPDES permit states the treatment plant is designed to treat an average dry weather ("ADW") flow of 0.3480 million gallons per day ("MGD"), an average wet weather ("AWW") flow of 0.8180 MGD, and a maximum wet weather ("MWW") flow of 1.2740 MGD, and further states that wastes in such volumes or quantities as to exceed the design capacity of the treatment works or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of the treatment works and are prohibited.

26. The EPA inspection, review of the City's monthly monitoring reports submitted to IDNR and review of the City's responses to the Section 308 Information Request demonstrate that the City violated the NPDES permit prohibition against exceeding the design capacity of the treatment works 118 times, as follows:

- a. The City discharged average monthly flows in excess of the design capacity average dry weather flow in 22 separate months from February 2011 through November 2014;
- b. The City discharged average monthly flows in excess of the design capacity average wet weather flow in June 2011, April 2013, May 2013, August 2014 and September 2014; and
- c. The City discharged daily flows in excess of the design capacity maximum wet weather flow on 91 separate days from February 2011 through October 2014.

27. The City's discharge of flows exceeding the design capacity of the treatment works as described above, is a violation of the terms and conditions of a 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

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

29. In accordance with this Order, the City 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.

30. Within 10 days of the receipt of this Order, the City shall submit to the EPA, with a copy to IDNR, a report certifying that the City has implemented appropriate corrective measures or procedures to ensure data is accurately and correctly transcribed from laboratory reports to MORs, including obtaining appropriate corrected reports from the laboratory when reported laboratory data are considered incorrect.

31. As soon as possible, but no later than 270 days following receipt of this Order, the City shall submit to the EPA, with a copy to the IDNR, a detailed Plan of Action ("POA") to identify and eliminate excess flows and/or increase treatment capacity sufficient to prevent future exceedances of the treatment facility design capacity and bring the wastewater system into compliance with the effluent limits contained in the City's NPDES permit. The POA shall describe in detail actions deemed necessary to eliminate and prevent recurrence of the violations cited above as expeditiously as possible, but no later than July 31, 2020.

32. As soon as possible, but no later than July 31, 2020, the City shall certify that it has taken all measures necessary to achieve compliance with its NPDES permit. The City shall submit semi-annual reports in compliance with Paragraphs 35 through 38, below, describing progress made toward achieving compliance.

33. The City shall at all times comply with requirements established by the State of Iowa statutes and regulations 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 on Consent, the City shall allocate adequate time and resources to comply with applicable state requirements.

34. After review of the information submitted by the City pursuant to the above Paragraphs, the 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.

Submissions

35. *Reporting to EPA and IDNR:* In addition to the submittals required above, the City shall submit to the EPA, with a copy to the IDNR, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every April 28 and October 28 until termination of this Order; the first report is due April 28, 2016. The City's report shall include, at a minimum:

- a. A listing of NPDES permit violations, if any, that occurred during the reporting period;
- b. A description of the actions taken by the City to mitigate and minimize or prevent future recurrences of permit violations, if any, that occurred during the reporting period;
- c. A description of the status of activities scheduled to be underway or completed during the reporting period;
- d. A description of activities scheduled for the next reporting period;
- e. Actions proposed or completed to address schedule slippages anticipated or experienced; and
- f. For submittal to the EPA only, a copy of that reporting period's MORs. The City must submit MORs to IDNR as required by its NPDES permit.

36. All submissions by to the 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 Albia 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.

37. All documents required to be submitted to the EPA by this Order, shall, whenever possible, be submitted electronically to:

dillard.wayne@epa.gov

Documents that cannot be submitted electronically shall be submitted to:

Wayne Dillard, P.E., or his successor
Environmental Engineer
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

Ted Petersen, or his successor
Environmental Program Supervisor
Iowa Department of Natural Resources
Field Office # 5
7900 Hickman Rd, Suite 200
Windsor Heights, Iowa 50324-4432

General Provisions

Effect of Compliance with the Terms of this Order

39. Compliance with the terms of this Order shall not relieve the City of liability for, or preclude the 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.

40. 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. The 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 the 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

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

Severability

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

Effective Date

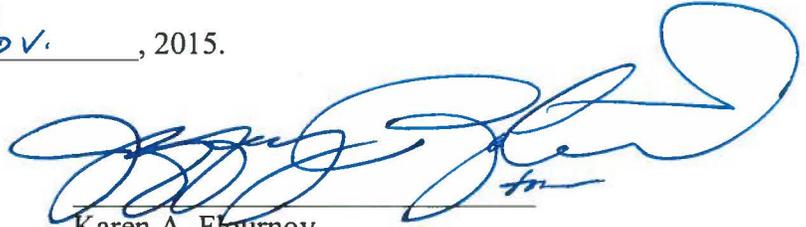
43. This Order shall be effective upon receipt by the City of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

44. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

**FOR THE COMPLAINANT,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7:**

Issued this 9th day of Nov., 2015.



Karen A. Fournoy
Director
Water, Wetlands and Pesticides Division



Elizabeth Huston
Assistant Regional Counsel
Office of Regional Counsel

**FOR THE RESPONDENT,
CITY OF ALBIA, IOWA:**

Tom Murphy
Signature

9-24-15
Date

Tom Murphy
Name

City of Albia 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 on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Tom Murphy
Mayor, City of Albia
120 South A Street
Albia, Iowa 52531

and via first class mail to:

Ted Petersen
Environmental Program Supervisor
Iowa Department of Natural Resources
Field Office # 5
7900 Hickman Rd, Suite 200
Windsor Heights, Iowa 50324-44322

11/9/15

Date



Signature