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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
NORTHWOOD, IOWA)
)
)
Respondent,)
)
)
)
Proceedings under Sections 308(a) and)
309(a)(3) of the Clean Water Act,)
33 U.S.C. §§ 1318(a) and 1319(a)(3))
_____)

Docket No. CWA-07-2013-0063

ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT

I. Preliminary Statement

1. This Administrative Order for Compliance on Consent (“Order on Consent”) is issued by the United States Environmental Protection Agency (“EPA”) to the City of Northwood, Iowa (“City” or “Respondent”), pursuant to the authority vested in the Administrator of the EPA by Sections 308 and Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319(a)(3), as amended. This authority has been redelegated by the Administrator to the Regional Administrator of the EPA, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. The EPA, together with the City of Northwood, Iowa (hereafter “City” or Respondent”), enter into this Section 309(a)(3) Order on Consent in order to carry 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.”

3. It is the Parties’ intent through entering into this Order on Consent to address discharges of pollutants by the City into the waters of the United States 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 for the City to attain compliance with the CWA and its NPDES permit.

4. By entering into this Order on Consent, 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 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.

II. Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.

7. 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. Section 308 of the CWA, 33 U.S.C. § 1318, authorizes the EPA to request and collect information in order to, among other matters, determine whether the owner of a point source is in compliance with the CWA.

8. 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.

III. EPA Findings

EPA’s Findings of Fact and Law

9. The City of Northwood is a political subdivision of the state organized under the laws of Iowa, and as such is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. At all relevant times, the City has owned and operated a three-cell aerated lagoon sewage treatment plant (“STP”) and its associated sewer collection and transmission systems, which receives and treats wastewater from residential, commercial and industrial connections within Northwood, Iowa, which together are a Publicly Owned Treatment Works (“POTW”), as defined by 40 C.F.R. § 403.3(q).

11. The City’s STP discharges into Shell Rock River.

12. Shell Rock River is a “navigable water” of the United States as defined by Section 502 of the CWA, 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

13. The effluent from the City's POTW is "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 502(6).

14. 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.

15. 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.

16. IDNR granted NPDES Permit No. IA0003395 to the City for discharges from its STP to Shell Rock River. The permit became effective July 6, 2007, with an expiration date of July 5, 2012. The City timely applied for reissuance of its permit and IDNR has not yet reissued the permit. Northwood's existing NPDES permit has been administratively extended and remains in effect.

17. The City's NPDES permit establishes effluent limitations and sampling frequency for pollutants discharged at Outfall 001, including, but not limited to, five-day carbonaceous biochemical oxygen demand ("CBOD₅"), ammonia nitrogen (measured as N), total nitrogen, total residual chlorine ("TRC") and *E. coli*. The permit also specifies the approved procedures, consistent with 40 C.F.R. Part 136, for sampling, analysis and reporting results.

18. The City's NPDES permit requires Northwood to record the results of all sampling, measurement and analysis for all pollutants regulated by the NPDES permit each month on a Monthly Operating Report ("MOR") and submit the report to the IDNR.

19. On or about April 23 through 25, 2012, an EPA representative performed a Compliance Sampling Inspection (hereafter "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 NPDES permit and the CWA. During the EPA Inspection, the inspector collected wastewater samples from the City's STP, reviewed the City's records related to the NPDES permit, interviewed City personnel, and observed the STP.

20. At the conclusion of the inspection, the City was issued a Notice of Potential Violation ("NOPV") indicating that the inspection identified potential violations by the City of the provisions of its NPDES permit. A copy of the inspection report was sent to the IDNR and the City on or about July 3, 2012.

21. The City submitted a letter dated May 4, 2012, in response to the NOPV indicating that monitoring and reporting deficiencies noted in the NOPV were being corrected and that the City was "in the process of planning new construction or Treatment Plant upgrades" to address the effluent violations at the STPs.

22. By letter dated November 9, 2012, the EPA issued to the City a Request for Information under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), regarding the design and operation of its POTW and regarding contributions to the City's POTW by Industrial Users.

23. The City responded to the EPA Request for Information by cover letter dated November 27, 2012, answers to questions raised in the Request for Information and attached documents. The City's submittal included a statement that the City had hired an engineering firm to conduct a Wastewater Facility Plan, including a scope and cost options for a complete treatment facility renovation, but had not yet received the results.

EPA's Findings of Violation

24. The facts stated in Paragraphs 9 through 23, above, are herein incorporated.

25. Based on observations documented during the EPA inspection, review of information provided by the City in its responses to the NOPV and the Request for Information, and other information reportable by the City pursuant to its NPDES permit, the EPA finds that the Respondent has violated the terms and conditions of its NPDES permit, including, but not limited to, the following:

- a. *CBOD₅*: discharging effluent from Outfall 001 in violation of the *CBOD₅* limitation of its permit as follows:
 - i. exceeding the 30-day average concentration limit the months of April 2009, February through April 2011;
 - ii. exceeding the 30-day average mass limit in the months of February 2009, March 2009, and March and April 2011;
 - iii. exceeding the daily maximum concentration limit on at least one day during the months of February through April 2009, June 2009, and February through April 2011; and
 - iv. exceeding the daily maximum mass limit on at least one day during the months of March 2009 and March 2011.

- b. *Ammonia Nitrogen*: discharging effluent from Outfall 001 in violation of the ammonia nitrogen limitation of its permit as follows:
 - i. exceeding the 30-day average concentration limit the months of September 2008, March through June 2009, March and April 2010; March through June 2011, March through May 2012, September 2012, and March through June 2013;
 - ii. exceeding the 30-day average mass limit in the months of March through June 2009, March 2010, April through June 2011, and April through June 2013; and
 - iii. exceeding the daily maximum mass limit on at least one day during the month of June 2013.

- c. *Total Nitrogen*: discharging effluent from Outfall 001 in violation of the total nitrogen limitation of its permit as follows:
 - i. exceeding the 30-day average mass limit in the months of April 2008, February 2009, March 2009, May 2009, March 2010, March through May 2011, and April through June 2013; and

- ii. exceeding the daily maximum mass limit on at least one day during the months of April 2008, May 2008, February through June 2009, March 2010, March through June 2011, and April through June 2013.
- d. *Total Residual Chlorine*: discharging effluent from Outfall 001 in violation of the total residual chlorine limitation of its permit as follows:
 - i. exceeding the 30-day average concentration limit the month of August 2011;
 - ii. exceeding the 30-day average mass limit in the months of May 2011, August 2011, and June 2013;
 - iii. exceeding the daily maximum concentration limit on at least one day during the month of August 2011; and
 - iv. exceeding the daily maximum mass limit on at least one day during the months of August 2011 and June 2013.
- e. *E. coli*: discharging effluent from Outfall 001 in violation of the E. Coli limitation of its permit as follows:
 - i. exceeding the 30-day average concentration limit the month of October 2009, February through April 2011; and
 - ii. exceeding the daily maximum concentration limit on at least one day during the months of February through April 2009, June 2009, and May 2013.

26. The EPA finds that as a result of the City's failure to comply with the effluent limitations in its NPDES permit Respondent has been and continues to be in noncompliance with the requirements of Part A of its NPDES permit.

27. The EPA finds that each of Respondent's violations described in Paragraphs 25 and 26, above, is a violation of the terms and conditions of its NPDES permit, IA0032395, 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

28. 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, and considering further that Respondent may undertake to upgrade and/or modify the POTWs in order to comply with the terms and conditions addressed by its NPDES permit, IA0032395, the EPA finds that four (4) years is a reasonable time for Respondent to comply with the terms and conditions addressed by its NPDES permit.

IV. Section 309(a) Order for Compliance on Consent

29. Based on the EPA's Findings 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, upon admitting jurisdiction and neither admitting or denying the factual and legal conclusions contained in Section III, EPA Findings, above, AGREES to take, the actions described below:

30. In accordance with this Order on Consent, the City shall identify and implement necessary actions to correct the deficiencies cited above, and to comply with the conditions and limitations of its NPDES permit.

31. *Compliance Plan.* By no later than January 15, 2014, the City shall submit to the EPA, with a copy to the IDNR, a comprehensive written plan (the “Compliance Plan”) for achieving compliance with the City’s NPDES permit no later than December 31, 2017.

- a. The Compliance Plan shall describe in detail the actions to be taken or work to be completed, and how such actions or work will enable the City to achieve compliance with the effluent limitations prescribed by the City’s NPDES permit.
- b. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than December 31, 2017.
- c. The EPA will promptly review, and may provide comments on, the City’s Compliance Plan.

32. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, the City shall submit a written certification to the EPA, with a copy to the IDNR, that it has completed all actions required pursuant to this Order on Consent and achieved compliance with its NPDES permit.

33. The EPA will promptly review submittals from Respondent. If, after review of Respondent’s submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 49 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

34. 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.

V. Section 308 Information Demand

35. Based on the EPA’s Findings set forth above, and pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), the Respondent is required to make submissions as directed in Paragraphs 36 through 39, below.

36. *Reporting to the EPA and the IDNR:* In addition to the submittals required by Paragraphs 31 and 32 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 on Consent. These reports are due every January 28 and July 28 until termination of this Order on Consent pursuant to Paragraph 51 below; the first report is due July 28, 2014. These reports shall include, at a minimum:

- a. *Compliance Plan Progress.* Until submittal of the written certification of completion required pursuant to Paragraph 32, above, each report shall include a detailed update on the progress of the Compliance Plan, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period.
- b. *Discharge Monitoring Reports.* Each report submitted to the EPA shall include a copy of that reporting period's Monthly Monitoring Reports, signed and certified as required by the regulations at 40 C.F.R. § 122.22.

37. All submissions by the City to the EPA pursuant to the requirements of this Order on Consent shall contain the following certification signed by an authorized official:

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 violations.

38. Each submittal to the EPA required by this Order on Consent shall be sent via certified mail or overnight delivery, unless otherwise agreed to in writing by the EPA, and addressed to:

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

39. A copy of each submittal required by this Order on Consent shall be delivered to the IDNR and addressed to:

Dennis Ostwinkle
IDNR Field Office #6
1023 W. Madison St.
Washington, Iowa 52353-1623

and

Jeff Vansteenburgh, Supervisor
IDNR Field Office #2
2300 15th Street SW
Mason City, Iowa 50401

VII. General Provisions

Reservation of Rights

40. Compliance with the terms of this Order on Consent shall not relieve Respondent of liability for, or preclude EPA from initiating, an enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, as authorized by Section 309 of the CWA, 33 U.S.C. § 1319. Section 309(g)(6) of the CWA, 33 U.S.C. § 1319(g)(6), addresses the effect of this Order on Consent on subsequent actions by the EPA or the State and with respect to citizen suits.

41. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order on Consent.

42. This Order on Consent 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, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.

43. Issuance of this Section 309(a) Order on Consent and Section 308 Information Demand 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 set forth in the Findings.

44. Subject to the limitations of Paragraphs 4 and 29, above, Respondent reserves the right to contest liability in any subsequent action filed by the EPA to seek penalties for violation of this Order on Consent, and reserves the right to contest liability in any subsequent action by the EPA for any violations alleged in the Findings, above.

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

46. Failure to respond fully and truthfully to the Section 308 Information Demand may result in liability for an administrative or judicial action by the EPA to compel the City's response and/or seek civil penalties under Section 309 of the CWA, as modified by 40 C.F.R. Part 19. In addition, any person who knowingly submits false information may be subject to criminal prosecution under 18 U.S.C. § 1001.

Access and Requests for Information

47. Nothing in this Order on Consent shall limit the 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. This Order on Consent has no effect on Respondent's right to seek information under applicable federal, state or local law.

Severability

48. If any provision or authority of this Order on Consent, or the application of this Order on Consent to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order on Consent shall remain in full force and effect and shall not be affected by such a holding. Section numbers and headings are for the convenience of the reader and are not substantive provisions of this Order on Consent.

Modification

49. The EPA may, at its sole discretion, grant extensions of the compliance schedule/deadlines required by this Order on Consent by written notice to Respondent, without further formal amendment to the Order on Consent. The EPA's decision to grant an extension will not be unreasonably withheld. All other significant modifications to this Order on Consent may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Effective Date

50. This Order on Consent 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 on Consent.

Termination

51. This Order on Consent shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. The City may petition the EPA to terminate this Order on Consent upon correction of the deficiencies identified by this Order on Consent and demonstrated compliance with the terms of its NPDES permit. The EPA's decision to terminate this Order on Consent will not be unreasonably withheld.

Signatories

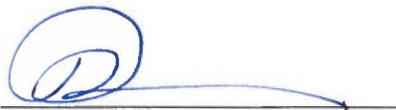
52. The undersigned for each Party has the authority to bind each respective Party to the terms and conditions of this Order on Consent. The Order on Consent may be signed in part and counterpart by each Party.

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

Issued this day, Dec. 11, 2013.



Karen A. Flournoy
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 Northwood, Iowa:

Jean Blomrodaw
Signature

12/3/2013
Date

City of Northwood, Iowa
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 on Consent 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 on Consent by first class certified mail, return receipt requested, to:

Honorable Jane Bloomingdale
City of Northwood
627 Central Ave.
Northwood, Iowa 50459

and by first class mail to:

Dennis Ostwinkle, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

Jeff Vansteenburgh, Supervisor
IDNR Field Office #2
2300 15th Street SW
Mason City, Iowa 50401

12/12/13

Date

Kathy Robinson