

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

| | | |
|--|---|------------------------------|
| IN THE MATTER OF |) | |
| |) | Docket No. CWA-07-2022- 0112 |
| Nashua, Iowa |) | |
| |) | |
| Respondent |) | FINDINGS OF VIOLATION AND |
| |) | COMPLIANCE ORDER |
| |) | |
| Proceedings under Section 309(a)(3) of the |) | |
| Clean Water Act, 33 U.S.C. § 1319(a)(3) |) | |
| _____ |) | |

Preliminary Statement

1. The following Findings of Violation and Compliance Order (“Order”) are made and issued pursuant to Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division.

Statutory and Regulatory Framework

2. 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, which provides that pollutants may be discharged in accordance with the terms of an NPDES permit issued pursuant to that Section.

3. 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.

4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States.”.

5. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an 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 Publicly Owned Treatment Works (“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.

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

EPA’s General Allegations

8. Respondent, the City of Nashua, is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. The City of Nashua, Iowa is and was at all times relevant to this action the owner and/or operator of the Nashua Wastewater Treatment Facility (hereafter “WWTF”) and the associated sewer systems, which receive and treat wastewater from residential and commercial connections within Nashua, which together are a Publicly Owned Treatment Works (“POTW”), as defined by 40 C.F.R. § 403.3(q).

10. The POTW discharges wastewater containing pollutants from residential and commercial connections within Nashua via an Outfall into the Cedar River, a water of the United States.

11. The Cedar River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

12. At all times relevant to this action discharges from Respondent’s POTW results in the addition of pollutants from a point source to navigable waters, meeting the definition of “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

13. Because Respondent owns or operates a facility that discharges pollutants from a point source into waters of the United States, Respondent is subject to the CWA and the National Pollutant Discharge Elimination System (“NPDES”) program. Thus, Respondent’s discharge of pollutants requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

14. On October 1, 2017, IDNR issued NPDES permit IA0024503 to the Respondent for discharges from Respondent’s POTW into the Cedar River, subject to compliance with conditions and limitations set forth in the permit. This permit is set to expire on September 30, 2022.

15. The NPDES permit includes “Monitoring and Reporting Requirements” that require Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility’s compliance or noncompliance with the permit and applicable regulations. The permit also requires Respondent to file Monthly Operation Reports (“MORs”) with IDNR, which certify the results of monitoring.

16. Respondent’s NPDES permit sets numeric effluent limitations and monitoring requirements at Outfall 001 for pollutants, including but not limited to, five-day Carbonaceous Biological Oxygen Demand (“CBOD5”), Total Suspended Solids (“TSS”), Total Nitrogen, and E. Coli.

17. Certified MORs maintained and filed by Respondent with IDNR in accordance with the NPDES permit document discharges of pollutants from the facility that exceed permitted effluent limitations established in the permit.

18. IDNR issued Notices of Violation (“NOV”) to Respondent notifying Respondent of noncompliance with NPDES permit effluent limitations on the following dates: February 5, 2019; January 27, 2020; December 7, 2020; October 7, 2021; March 9, 2022 and June 1, 2022. The NOV’s also requested Respondent identify the actions taken to address the noncompliance.

19. On October 5-8, 2020, the EPA conducted a Compliance Evaluation Inspection (“Inspection”) of Respondent’s POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318, to evaluate Respondent’s compliance with its NPDES permit and the CWA. During the Inspection and shortly thereafter, the EPA inspector obtained and reviewed copies of Respondent’s documents related to the NPDES permit. The EPA Inspector identified violations at the facility including a failure to comply with effluent limitations and the failure to remove a minimum of 85% of the TSS that enters its facility. The inspector also noted that the amount of wastewater entering the POTW exceeded what the POTW was designed to treat.

20. A Notice of Potential Violation (“NOPV”) was issued by the EPA inspector on October 8, 2020, at the conclusion of the inspection. A written response to the NOPV was provided on the same day, October 8, 2020.

21. A copy of the Inspection report was sent to the POTW by letter dated November 25, 2020, which identified potential violations.

EPA’s Findings of Violation

Count 1

Effluent Limit Violations

22. The paragraphs set forth above are re-alleged and incorporated herein by reference.

23. According to the City’s MORs submitted to IDNR, Respondent has continued to violate the weekly and monthly average effluent limitations for both TSS and CBOD5 as set forth in its NPDES permit from January 2022 through June 2022, the most recent reporting period.

24. Respondent’s failures to comply with the numeric effluent limitations are violations of the NPDES permit conditions and limitations, and as such, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

Count 2

TSS Removal Violations

25. The paragraphs set forth above are re-alleged and incorporated herein by reference.

26. The City's NPDES permit requires a minimum of 85% removal of the TSS that enters its facility.

27. The Inspection and Respondent's MORs identify failures to remove a minimum of 85% of the TSS entering the WWTF from January 2022 through June 2022, the most recent reporting periods.

28. Respondent's failure to comply with the TSS removal requirements of the NPDES permit is a violation of the NPDES permit conditions and limitations, and as such, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

Order for Compliance

29. Based on the EPA 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 the Respondent to take the actions described below.

30. Respondent shall take actions to comply with all requirements of its NPDES permit.

31. *Compliance Plan and Schedule.* Within 60 calendar days of the effective date of the Order, Respondent shall develop and submit to EPA a Compliance Plan that describes the procedures and implementation timetable for the POTW to achieve compliance with the requirements of the NPDES permit and the CWA as soon as possible but no later than two years from the effective date of this Order.

- 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 Respondent to achieve compliance. The Compliance Plan shall identify the author, licensed engineer, or other consultant who has created the plan to achieve compliance. The Compliance Plan shall identify the commissioners, board, or other party who has approved the plan and will implement the required facility changes.
- b. If Respondent believes it needs additional time to complete, prepare, revise, or implement the Compliance Plan, it shall submit a request by mail or email to the EPA contact at the address identified below, indicating the basis for the request and the period of additional time requested. Any decision by the EPA to grant such request shall be in writing and delivered to Respondent by mail or email.

32. Within 30 days of completion of the corrective actions detailed in the Compliance Plan, the City shall submit a written certification stating that the City has completed all required corrective actions.

33. *Reporting to the EPA and IDNR.* Within 60 days of the effective date of the Order, and on the first working day of each calendar quarter thereafter until termination of this order, Respondent shall submit completed work orders, signed receipts, and a summary narrative documenting completion of the work necessary to remedy the violations noted above.

Reports/Submissions

34. *Submittals*. All documents required to be submitted to the EPA by this Order, including the certification statement in Paragraph below, shall be submitted by electronic mail to:

Hannah Lewis, Compliance Officer
Enforcement and Compliance Assurance Division, Water Branch
lewis.hannah@epa.gov
11201 Renner Blvd
Lenexa, KS 66219

35. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

36. All documents required to be submitted pursuant to this Order shall also be submitted by mail to IDNR to the address provided below:

Trent Lambert, Supervisor
Iowa Department of Natural Resources
Field Office 2 – North Central Iowa
2300 15th St. SW
Mason City, Iowa 50401

37. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

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.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

38. Compliance with the terms of this Order shall not relieve Respondent 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.

39. 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

40. Nothing in this Order 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.

Severability

41. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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.

Judicial Review

42. Respondent has the right to seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

Failure to Comply

43. Failure to comply with the terms of this Order may result in Respondent's liability for significant statutory civil penalties for each violation under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondents have violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty, the court will consider the seriousness of Respondents' violations, their economic benefit resulting from the violations, any history they may have of such violations, any good faith efforts they have made to comply with legal requirements, the economic impact a penalty may have upon them, and such other matters as justice may require.

Opportunity to Confer

44. Respondent has the opportunity to confer with and/or submit information to the EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to Respondents. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to the EPA. If Respondent request a conference or wish to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. The EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

Effective Date

45. The terms of this Order shall be effective and enforceable against Respondent thirty (30) days after receipt of an executed copy of the Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from the effective date.

Modification

46. The EPA may subsequently amend this Order, in accordance with the EPA's authority under the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order. All deadlines for performance under this Order may be extended upon written approval by the EPA, at its sole discretion, without formal amendment to the Order.

Termination

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

For the Complainant, U.S. Environmental Protection Agency:

Issued this _____ day of _____, 2022.

**DAVID
COZAD**

Digitally signed by DAVID
COZAD
Date: 2022.09.15
16:26:22 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

**ELIZABETH
HUSTON**

Digitally signed by
ELIZABETH HUSTON
Date: 2022.09.12
16:42:01 -05'00'

Elizabeth Huston
Senior Counsel
Office of Regional Counsel

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance by electronic mail, to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency Region 7
R7_Hearing_Clerk_Filings@epa.gov

Representative(s) for Respondent:

David Skilton
dh.skilton@gmail.com

Representatives for Complainant:

Elizabeth Huston
EPA Region 7 Office of Regional Counsel
huston.liz@epa.gov

Hannah Lewis
EPA Region 7 Enforcement and Compliance Assurance Division
lewis.hannah@epa.gov

Date

Signature