

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 ("Complainant").

4. Respondent is the City of Alta, Iowa ("the City") which owns and operates a publicly owned treatment works ("POTW"). The POTW includes a wastewater treatment facility which serves the City.

Statutory and Regulatory Framework

5. 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.

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 National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

7. To implement Section 402 of the CWA, 33 U.S.C. § 1342, EPA promulgated regulations codified in 40 C.F.R., including Parts 122 and 136.

8. The Iowa Department of Natural Resources ("IDNR") is the agency within the State of Iowa that has been authorized to administer the federal NPDES program pursuant to Section 402 of the CWA and its implementing regulations. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

Factual Background

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 and commercial and/or industrial sources.

11. The City's POTW is a "point source" that "discharges pollutants" into "navigable waters" 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. On February 10, 2003, IDNR issued NPDES Permit No. IA0024449 (hereafter "NPDES permit") to the City for discharges from its POTW to Dry Run Creek, a tributary of the Little Maple River. The City reapplied for NPDES Permit coverage on August 6, 2007. The City's NPDES Permit expired in February 2008. The requirements of the 2003 NPDES permit remain in effect until a new NPDES permit is issued.

14. The Effluent Limitations and Monitoring Requirements Section of the City's NPDES permit establishes effluent limits for Total Suspended Solids ("TSS"), five-day biochemical oxygen demand ("BOD₅"), and pH discharges from Outfall 001. The NPDES permit sets weekly average limitations for TSS and CBOD₅ at 45 milligrams per Liter (mg/L) and monthly average limitations for TSS and CBOD₅ at 30 mg/L, and requires a removal efficiency of 85% for TSS and CBOD₅. The NPDES Permit also requires monitoring of certain pollutant parameters, including flow, dissolved oxygen, ammonia as nitrogen, pH and temperature at in-stream monitoring points upstream and downstream of the Outfall 001.

15. The City's NPDES permit also requires Respondent to file Discharge Monitoring Reports ("DMRs") with the IDNR on a monthly basis that summarize Respondent's sampling and analysis results for all pollutants regulated by the NPDES permit.

16. IDNR issued Notices of Violation to Respondent regarding permit limit exceedances for CBOD and TSS in November 2004, February 2005, August 2007, November 2007, and August 2008.

17. On August 18-21, 2008, an EPA representative performed an inspection of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), and included in the inspection was observation of the City's POTW.

Findings of Violation

18. The facts stated in paragraphs 9 through 17 above are herein incorporated.

19. Within the past five years, the City has exceeded its weekly average and monthly average NPDES permit limitations for TSS and CBOD₅, including the following:

a. the City exceeded the monthly average NPDES permit limitations for TSS during the months of May 2006, April 2007, May 2007, August 2007, October 2007, May 2008, and June 2008;

b. the City exceeded the daily average NPDES permit limitations for TSS during the months of May 2006, March 2007, April 2007, May 2007, August 2007, October 2007, May 2008, June 2008, and July 2008;

c. the City exceeded the monthly average NPDES permit limitations for CBOD₅ during the months of March and April 2007; and

d. the City exceeded the daily average NPDES permit limitations for CBODs during the month of April 2007.

20. Within the past five years, the City has exceeded the required 85% removal efficiency for TSS and CBODs, including the following:

a. the City failed to achieve the 85% removal efficiency for TSS during the months of April 2007, May 2007, August 2007, October 2007, and April 2008; and

b. the City failed to achieve the 85% removal efficiency for CBODs during the months of August 2005, January 2006, April 2007, May 2007, and April 2008.

21. Each discharge of pollutants as identified in Paragraphs 19 and 20 above is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the City, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

22. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region 7 hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent for the violations cited above, in the amount of Ten Thousand Two Hundred and Thirty-Eight Dollars (\$10,238).

CONSENT AGREEMENT

23. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

24. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

25. Respondent neither admits nor denies the factual allegations set forth above.

26. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CAFO.

27. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

28. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

29. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

30. This CAFO addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

31. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of the Administrative Order for Compliance on Consent, CWA-07-2009-0092, which requires Respondent to come into compliance with Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

32. The effect of settlement described in paragraph 30 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 31 above, of this CAFO.

33. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of \$10,238 as set forth in paragraph 1 of the Final Order.

34. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Ten Thousand Two Hundred and Thirty-Eight Dollars (\$10,238), to be paid in full no later than 30 days after the effective date of this CAFO. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CWA-07-2010-0050.

Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
901 North 5th Street
Kansas City, Kansas 66101

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

2. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

3. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

General Provisions

4. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

5. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

6. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

7. Respondent and Complainant shall bear their respective costs and attorney's fees.

8. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

3-24-10

Date

Karen A. Hourney

William A. Spratlin

Director

Water, Wetlands and Pesticides Division

3/29/10

Date

Kristen Nazar

Kristen Nazar

Assistant Regional Counsel

**RESPONDENT:
CITY OF ALTA, IOWA**

Feb-01-10
Date

Richard Morris

Name (Print) Richard Morris

Title MAYOR

IT IS SO ORDERED: This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

March 31, 2010
Date

IN THE MATTER OF City of Alta, Iowa, Respondent
Docket No. CWA-07-2010-0050

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Tom Huseman, City Clerk
City of Alta, Iowa
City Hall
223 Main Street
Alta, Iowa 51002

Dated: 3/31/10


Kathy Robinson
Hearing Clerk, Region 7