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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2021-0077
Saint Ansgar, Iowa)	
)	
Respondent)	FINDINGS OF VIOLATION AND
)	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 following Findings of Violation and Administrative Order for Compliance on Consent ("Order on Consent") are made and issued pursuant to Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). 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.

2. Respondent is the city of Saint Ansgar, Iowa ("Respondent" or "the City") and was at all relevant times a municipality organized under the laws of the state of Iowa.

3. EPA, together with the Respondent 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 Respondent's alleged noncompliance with the CWA and 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 Respondent to attain compliance with the CWA and its NPDES permit.

5. 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 neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations 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.

Statutory and Regulatory Framework

6. 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.

7. 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.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States,” which in turn has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

9. 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.

10. 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.

11. 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

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

13. Respondent is the owner and/or operator of a POTW in Saint Ansgar, Iowa, that includes a wastewater treatment facility (“WWTF”), consisting of a three-cell aerated lagoon with an approximate total surface area of 20.5 acres along with a sewage collection system, which receives wastewater from various domestic and non-domestic sources.

14. The WWTF discharges through an outfall (“Outfall 001”) to the Cedar River. The Cedar River is a water of the United States.

15. The WWTF is a "point source" that "discharges pollutants" to "navigable waters" of the United States, as these terms are defined by Section 502(14), (12) and (7) of the CWA, 33 U.S.C. § 1362(14), (12) and (7), respectively.

16. On May 1, 2019, the IDNR issued NPDES permit number IA0033723 to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 ("NPDES Permit"), effective until April 30, 2024. The NPDES Permit authorizes discharges from the WWTF to the Cedar River subject to conditions and limitations set forth in the Permit.

17. On August 27, 2020, the IDNR performed a compliance inspection of the City's WWTF. Following the results of the IDNR inspection, a Notice of Violation was issued to the City, by IDNR on September 17, 2020, for effluent limit violations for the parameter of *Escherichia coli* (*E. coli*) bacteria.

18. On October 19-22, 2020, the EPA performed a Compliance Sampling Inspection of the City's WWTF ("Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

19. During the Inspection, the EPA inspector reviewed and collected copies of records relating to the Permit, observed the City's POTW, including the collection system, WWTF, facility outfall, and collected influent and effluent samples.

20. At the conclusion of the Inspection, the EPA inspector provided the City a Notice of Potential Violation ("NOPV"), which described the inspector's preliminary observations regarding potential violations, including, but not limited to, failure to meet effluent limits, failure to document the calibration of pH meters, influent flows exceeded the permitted design flow, and failure to ensure all lagoon aerators were operable.

21. The City's engineer provided a response, on behalf of the City, to the NOPV on or about October 30, 2020, following the Inspection.

22. A copy of the EPA Inspection Report was sent to the City on or about December 7, 2020.

EPA's Findings of Violation

Count 1

Failure to Comply with Effluent Limitations

23. The facts stated above are re-alleged and incorporated herein by reference.

24. Respondent's NPDES Permit establishes effluent limits with monitoring and reporting requirements for the POTW's Outfall 001, including daily maximum and monthly average limits for Total Nitrogen, monthly and 7-day average concentration (milligrams per liter) and mass loading (pounds per day) limits for Five Day Carbonaceous Biochemical Oxygen Demand ("CBOD") and Total Suspended Solids ("TSS"), daily minimum and daily maximum

limits for pH, and seasonal geometric mean limits for E. coli measured in March through November.

25. Respondent's NPDES Permit requires that the 30-day average percent removal efficiency for the parameter of CBOD measured by the WWTF shall not be less than 85 percent.

26. Based on observations made during the EPA Inspection and a review of the City's effluent monitoring data, the EPA finds the following:

- a. Two E. coli exceedances in in May 2019 and May 2020;
- b. Six pH daily maximum exceedances in June 2020, October 2020, November 2020, December 2020, January 2021, and May 2021
- c. Eight CBOD exceedances, including:
 - i. Monthly average concentration exceedances in January 2020 and March 2020;
 - ii. Monthly average loading exceedance in June 2020;
 - iii. 7-Day average loading exceedances in June 2018, August 2018, January 2020, July 2020, and August 2020;
- d. Fifteen TSS exceedances, including:
 - i. Monthly average concentration exceedance in June 2019;
 - ii. 7-Day average concentration exceedances in June 2019 and March 2020;
 - iii. Monthly average loading exceedances in August 2018, September 2018, October 2018, June 2019, June 2020, and August 2020;
 - iv. 7-Day average loading exceedances in August 2018, September 2018, June 2019, June 2020, July 2020, and August 2020;
- e. Two Total Nitrogen exceedances, including:
 - i. Daily maximum exceedance in June 2018;
 - ii. Monthly average concentration exceedance in June 2018;
- f. Four occurrences of a failure to meet 85% removal efficiency of CBOD in January 2020, February 2020, March 2020, and December 2020, and

27. Each failure to comply with effluent limitations, as outlined in the paragraphs above, is a violation of the terms and conditions of Respondent's NPDES permit and, as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Facility flows exceed permitted design capacity

28. The facts stated above are re-alleged and incorporated herein by reference.

29. Respondent's NPDES Permit requires the WWTF to measure influent wastewater flows a minimum of once per day. The NPDES Permit lists the WWTF's design capacity in average dry weather (ADW), average wet weather (AWW), and maximum wet weather (MWW)

flows in million gallons per day (MGD). The NPDES Permit lists the ADW flow as 0.103 MGD, the AWW flow as 0.180 MGD, and the MWW flow as 0.243 MGD.

30. Based on review of the WWTF's effluent monitoring data included in the Discharge Monitoring Reports, the EPA finds that within the timeframe of January 2018 through March 2021, the WWTF exceeded the ADW flow for a total of 39 months, exceeded the AWW flow for a total of 29 months, and exceeded the MWW flow for a total of 17 months.

31. The failure to operate within the WWTF's design flow capacity, as described in the paragraphs above, is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

Count 3

Failure to calibrate laboratory equipment

32. The facts stated above are re-alleged and incorporated herein by reference.

33. Standard Conditions, Part 4 (a) (Monitoring and Records of Operation), of Respondent's NPDES Permit requires the WWTF to retain, for a minimum of three years, all paper and electronic records of monitoring activities and results.

34. During the Inspection, the inspector noted that the Facility did not have documentation of equipment calibration for the WWTF's pH meter(s).

35. The failure to comply with the records retention requirement for monitoring equipment, as described in the paragraphs above, is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to operate and maintain facility equipment

36. The facts stated above are re-alleged and incorporated herein by reference.

37. Standard Conditions, Part 8 (Proper Operation and Maintenance), of Respondent's NPDES Permit requires, "all facilities and control systems shall be operated as efficiently as possible and maintained in good working order".

38. Based on observations at the time of the EPA Inspection, the Inspection documented that not all of the WWTF's lagoon aerators were in operation.

39. The failure to operate and maintain the Facility's equipment, as described in the paragraphs above, is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

Order for Compliance on Consent

40. 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, and the Respondent hereby AGREES, to take the actions described below.

41. In accordance with this Order, the Respondent shall immediately cease all discharges, except discharges in compliance with its NPDES Permit, and shall take all necessary actions 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. At a minimum, the Respondent shall:

- a. Properly operate and maintain the WWTF, including maintenance and calibration of monitoring and laboratory equipment (including pH and influent flow meters) and retain all calibration records in accordance with regulatory and NPDES permit requirements; and
- b. Repair and operate the required number of aerators designed for the WWTF.

42. By no later than thirty (30) days after the effective date of this Order, the City shall retain the services of a qualified engineer or wastewater specialist to assist the City in identifying and addressing any needed infrastructure and/or operational and management changes for the WWTF and/or collection system. The issues to be considered during this assessment should include, but are not limited to:

- a. Assessment of the WWTF and collection system to ensure all equipment and facilities are in good repair and functioning appropriately and that the WWTF's operational controls are efficient and effective, to achieve compliance with NPDES permit limitations;
- b. Assessment of all contributing industries that discharge to the WWTF (in addition to industries without pretreatment agreements) to ensure proper pre-treatment agreements (new or revised) are initiated and controls are developed; and
- c. Identification of all necessary corrective measures to ensure compliance with NPDES permit limitations.

43. *Compliance Plan.* By no later than sixty (60) days after the effective date of this Order, 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 12 months from the date of the 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 the City to achieve compliance with the effluent and narrative limitations prescribed by the City's NPDES Permit.

- b. The Compliance Plan shall include a proposed sequential milestone schedule for completing any proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than thirty-six (36) months from the date of the order.
- c. The EPA will promptly review, and may provide comments on, the City's Compliance Plan.

44. *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.

45. 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 outlined below or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

46. *Quarterly Reports.* In addition to the submittals required above, the City shall submit to EPA quarterly reports describing the actions the City has taken to comply with the terms of this Order, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period. These reports are due by April 1st, July 1st, October 1st, and January 1st following the date of this Order until termination of this Order as described, below.

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

tipton.lantz@epa.gov

Lantz Tipton, or successor
U.S. Environmental Protection Agency – Region 7
Enforcement and Compliance Assurance Division
Water Branch
11201 Renner Boulevard
Lenexa, Kansas 66219.

48. 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.

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

Carl Berg, Environmental Specialist Senior
Iowa Department of Natural Resources
Field Office 2 – North Central Iowa
2300 15th St. SW
Mason City, Iowa 50401

50. 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

51. 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.

52. 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

53. 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

54. 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.

Effective Date

55. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Modification

56. Upon written request by Respondent, the EPA, in its sole discretion, may extend a compliance schedule and or deadline. Any extension must be made by EPA in writing, and without further 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 of this Order signed by each Party.

Termination

57. 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 16 day of December, 2021.

Lubbe,
Wendy

Digitally signed by Lubbe,
Wendy
Date: 2021.12.15
12:27:03 -06'00'

Wendy Lubbe
Acting Director
Enforcement and Compliance Assurance Division

MELISSA BAGLEY

Digitally signed by MELISSA
BAGLEY
Date: 2021.12.16 10:18:55 -06'00'

Melissa Bagley
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, City of Saint Ansgar:

Signature Keith N. Horgen

Date 12-7-2021

Name Keith N. Horgen

Title Mayor

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 Hearing Clerk, U.S. 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 on Consent by first class certified mail - return receipt requested, to:

The Honorable Keith Horgen
Mayor, Saint Ansgar
E. E. S. Mitchell, P.O. Box 307
Saint Ansgar, Iowa 50472

and by first class mail to:

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

Date 1/26/2022

Signature Kateisha R. Rose