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U.S. EPA REGION 7
HEARING CLERK

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2024-0108
Sanborn, 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 with concurrence of the Regional Counsel.

2. Respondent is the city of Sanborn, 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) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (4) 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. Section 402 of the CWA 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,” in part, as the “waters of the United States.”

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. The 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 Sanborn, Iowa, that includes a sewage treatment plant (“STP”), consisting of a Moving Bed Biofilm Reactor (“MBBR”) unit, and three (3) aerated lagoon cells operated in a series with continuous discharge. The STP system includes bar screens and vortex grit removal, two aerobic digesters, and a final settling tank. The STP accepts reverse osmosis concentrate water from the City of Sanborn’s Water Treatment Plant (“WTP”) and industrial wastewater from a significant industrial user (“SIU”) Associated Milk Producers, Inc. (“AMPI”), a cheese and whey processing facility.

14. Respondent is the owner and/or operator of the City of Sanborn's WTP, which is a SIU that discharges Reverse Osmosis (RO) concentrate wastewater to the Respondent's STP.

15. The POTW discharges effluent through Outfall 001 to an unnamed tributary to the Little Floyd River.

16. The unnamed tributary to the Little Floyd River is a perennial stream that connects to the Little Floyd River, which connects to the Floyd River, which connects to the Missouri River, a traditional navigable water.

17. The unnamed tributary to the Floyd River is a relatively permanent water that is connected to a traditional navigable water.

18. The unnamed tributary to the Floyd River is a "water of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. The POTW 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.

20. On June 1, 2013, the IDNR issued NPDES permit number IA0032522 ("NPDES Permit") to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Following an upgrade of the STP, the NPDES Permit was renewed on July 1, 2019. On August 1, 2020, the IDNR amended NPDES permit number IA7165001 to the Respondent, which was amended to, "add flow monitoring to the east and west sample sites for the significant industrial user, AMPI Inc., to allow for pollutant mass calculations".

21. The POTW is equipped with a no discharge land application process that is listed as Outfall 002. During the summer months, effluent from Outfall 002 is land applied via irrigation to the City-owned municipal golf course. The golf course utilizes sodium hypochlorite (Cl₂) to disinfect the wastewater prior to irrigation. The system is capable of irrigating amounts up to 400,000 gallons per day. Groundwater near the irrigation area is monitored by eight monitoring wells installed throughout the golf course.

22. The "Effluent Limitations" section of the Respondent's NPDES Permit contain the monitoring requirements and limitations for the discharge of effluent from the POTW through Outfall 001, subject to conditions and limitations set forth in the Permit for the following parameters: Flow, pH, Dissolved Oxygen, Five-Day Carbonaceous Biochemical Oxygen Demand (CBOD₅), Total Suspended Solids (TSS), Ammonia Nitrogen (N), Chlorides (Cl), and E. coli.

23. The Effluent Limitations section of the NPDES Permit requires the STP to achieve an 85% removal efficiency for the parameters of CBOD₅ and TSS.

24. The "Design Capacity" section of Respondent's NPDES Permit establishes the acceptable levels that the STP is designed to receive and treat. The NPDES Permit lists the

design capacities for the STP for the following criteria: Average Dry Weather (ADW) flow, Average Wet Weather (AWW) flow, Maximum Wet Weather (MWW) flow, five-day Biochemical Oxygen Demand (BOD5), TSS, and Total Kjeldahl Nitrogen (TKN).

25. The Monitoring and Reporting Requirements section of the Respondent's NPDES Permit requires samples to be taken regularly of the 'raw waste' or influent of the STP prior to the treatment system for flow (daily), temperature (bi-weekly), BOD5 (bi-weekly), TSS (bi-weekly), Nitrogen (every two months), TKN (monthly) and pH (bi-weekly).

26. The Monitoring and Reporting Requirements section of the Respondent's NPDES Permit requires samples to be taken regularly of the final effluent from Outfall 001 for flow (daily), grab samples of pH (5 times per week) and temperature (bi-weekly) measurements, and 24-hour composite samples be collected for the parameters of CBOD5 (bi-weekly), N (bi-weekly), CL (bi-weekly), Dissolved Oxygen (bi-weekly), and TSS (bi-weekly).

27. On August 1, 2012, a Treatment Agreement between the City and AMPI was approved by the IDNR. The Treatment Agreement lists the compatible and incompatible waste contributions allowed to be discharged by a SIU and received by the POTW. These limits are necessary to protect against interference and/or pass through, and design overloading to the POTW. On June 6, 2020, the Treatment Agreement was renewed, following plant expansions at AMPI and upgrades at the STP, with revised SIU limits. The Treatment Agreement provides the (monthly) average and (daily) maximum contribution amounts for the wastewater parameters of Flow, five-day Biochemical Oxygen Demand (BOD5), Total Suspended Solids (TSS), Total Kjeldahl Nitrogen (TKN), and Chloride (CL) that are to be discharged to the City of Sanborn STP.

28. On July 1, 2021, a Treatment Agreement between the Respondent's WTP and the STP was approved by the IDNR. The Treatment Agreement for the WTP provides the (monthly) average and (daily) maximum contribution amounts for the wastewater parameters of Flow, TKN, Ammonia Nitrogen, Sulfate, and Chloride that are to be discharged to the City of Sanborn STP.

29. The Significant Industrial User Effluent Limitations section of Respondent's NPDES Permit sets forth the same effluent limitations from the Treatment Agreements with the SIUs AMPI and the City's STP for their discharges to the STP.

30. On July 19-22, 2021, the EPA performed a Compliance Sampling Inspection of the STP ("Inspection") and an Industrial User and Compliance Sampling Inspection at the AMPI facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

31. During the Inspection, the EPA inspector reviewed documents, including Discharge Monitoring Reports and other monitoring data collected for the period January 2015 to June 2021, observed the STP, outfalls, the AMPI facility, and collected influent and effluent samples. A Notice of Preliminary Findings (NOPF) was provided to the City at the close of the inspection on July 22, 2021.

32. The City provided information to the inspector, in response to the NOPF by letter dated July 30, 2021, following the Inspection.

33. A copy of the Inspection Report was transmitted to the City on or about September 28, 2021.

34. On or about June 2, 2022, the EPA issued a request for information to the City pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requiring submittal of information regarding, among other things, additional discharge monitoring reports, communications between the City and AMPI regarding treatment plant upgrades, reports made to the City council concerning the operation of the POTW, communications between the City and AMPI, and plans to obtain compliance with the POTW's NPDES Permit. The City submitted responses to the information request by letter and Statement of Certification dated July 5, 2022, ("City's Information Request Response").

35. On May 29, 2024, the EPA performed a site visit to the POTW. The site visit consisted of visual observations of the STP.

36. The city of Sanborn is a non-pretreatment program city and the IDNR serves as the Approval Authority and Control Authority pursuant to Section 402 of the CWA, 33 U.S.C. 1317(b), 40 Code of Federal Regulations 403.3(c) and (f).

EPA's Findings

Count 1

Failure to Comply with Effluent Limitations

37. The paragraphs above are re-alleged and incorporated herein by reference.

38. The "Effluent Limitations" section of the City's NPDES Permit contain the STP monitoring requirements and limitations for the discharge of effluent from the City's POTW through Outfall 001, as described in Paragraph 22 above.

39. The POTW's effluent discharged through Outfall 001 exceeded the permit limitations for the following parameters: CBOD5, DO, Ammonia as N, pH, and TSS on multiple occasions from July 1, 2020, through to December 31, 2024, including, but not limited to, the following:

- a. Ammonia as N
 - i. the daily maximum limitations for mass were exceeded for a minimum of 13 days;
 - ii. the daily maximum limitations for concentration were exceeded for a minimum of 22 days;
 - iii. the monthly average limitations for mass were exceeded for a minimum of 12 months; and
 - iv. the monthly average limitations for concentration were exceeded for a minimum of 20 months.

- b. CBOD5
 - i. the monthly average limitations for mass were exceeded for a minimum of 1 month; and
 - ii. the monthly average limitations for concentration were exceeded for a minimum of two months.
- c. TSS
 - i. the 7-day average limitations for mass were exceeded for a minimum of four months;
 - ii. the monthly average limitations for mass were exceeded for a minimum of four months;
 - iii. the 7-day average limitations for concentration were exceeded for a minimum of eight months; and
 - iv. the monthly average limitations for concentration were exceeded for a minimum of 12 months.
- d. Dissolved Oxygen
 - i. the daily minimum limit was not obtained for a minimum of nine days.
- e. pH
 - i. the daily maximum limit was exceeded for a minimum of two days.

40. Each failure to comply with effluent limitations is a violation of the terms and conditions of Respondent's NPDES Permit and, as such, is a violation of Section 301(a) and the NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Count 2

Failure to Operate and Maintain Facility Equipment

41. The paragraphs above are re-alleged and incorporated herein by reference.

42. 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." In addition, 40 CFR 122.41(e) requires, "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

43. Based on observations at the time of the EPA Inspection and during the EPA's site visit, not all of the STP's treatment equipment was operational or being maintained including: the facility's second clarifier, the facility was bypassing treatment cells, and Cell #1 appeared to be short circuiting treatment.

44. 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 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(p).

Count 3
City of Sanborn WTP Discharges Exceed Significant Industrial User Effluent Limitations

45. The paragraphs above are re-alleged and incorporated herein by reference.

46. The Treatment Agreement described above in Paragraph 28 and Significant Industrial User Effluent Limitations section of Respondent's NPDES Permit established authorized discharge limits of Flow, pH, Ammonia (as N), TKN, Iron (Fe), Manganese (Mn), Sulfate (SO₄) and Chlorides (CL) for the City's Water Treatment Plant.

47. During the review of Discharge Monitoring Report data, the POTW's WTP exceeded the SIU limits established in the NPDES Permit for the parameters of Flow, TKN, N, CL, and SO₄ on multiple occasions from July 1, 2020, through to July 31, 2024, including, but not limited to, the following:

- a. Flow
 - i. Flows exceeded the Monthly Average limitation for a minimum of 20 months;
- b. TKN
 - i. the monthly average limitations for mass were exceeded for a minimum of 13 months;
- c. SO₄
 - i. the monthly average limitations for mass were exceeded for a minimum of 18 months;
 - ii. the daily maximum limitations for mass were exceeded for a minimum of 13 days;
 - iii. the monthly average limitations for concentration were exceeded for a minimum of 15 months;
 - iv. the daily maximum limitations for concentration were exceeded for a minimum of 13 days;
- d. Chlorides
 - i. the monthly average limitations for mass were exceeded for a minimum of one month; and
- e. Nitrogen
 - i. the monthly average limitations for mass were exceeded for a minimum of two months.

48. Each failure to comply with the WTP's SIU effluent limitations is a violation of the terms and conditions of Respondent's Treatment Agreement, as such, is a violation of Section 307(d) of the CWA, 33 U.S.C. §§ 1317(d).

Reasonable Time to Achieve Compliance

49. 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, the EPA finds that five (5) years is a reasonable time for Respondent to achieve compliance with its Permit.

Order for Compliance on Consent

50. 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.

51. In accordance with this Order, the Respondent 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.

52. *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 POTW’s NPDES Permit requirements and the WTP’s Treatment Agreement by no later than April 31, 2030.

- a. The Compliance Plan shall describe in detail the interim actions to be taken, including pilot tests, engineering or design planning for future work, and other interim actions such as use of coagulants to address the effluent limit violations before future work is complete, as well as options for future work to be completed after additional pretreatment is employed by AMPI.
- 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 April 31, 2030.
- c. The EPA will promptly review, and may provide comments on, the City’s Compliance Plan.

53. *Update Report.* By no later than six (6) months after the completion and operation of additional pretreatment of AMPI’s industrial discharges, the City shall submit an Update Report to the EPA, with a copy to the IDNR, that describes the final actions/work to be completed at the POTW and WTP together with an updated milestone schedule to be incorporated into the Compliance Plan schedule.

- a. All such actions/work in the Update Report shall be added to the Compliance Plan and completed as expeditiously as possible, with a final completion date of no later than April 31, 2030.
- b. Any necessary extensions to the milestone schedules in the Compliance Plan or to the final completion date may be included in the Update Report along with the justification for such extension and will be considered by EPA as modifications pursuant to Paragraph 66.

- c. The EPA will promptly review, and may provide comments on, the City's Update Report.

54. *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.

55. 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 66 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

56. *Reporting to EPA:* In addition to the submittals required by Paragraphs 52 and 53 above, the City shall submit to EPA, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every January 1st and July 1st until termination of this Order pursuant to Paragraph 67 below; the first report is due January 1, 2025. Each report shall include, at a minimum:

- a. Monthly Discharge Monitoring Reports. The City shall include copies of reports submitted to IDNR;
- b. Non-compliance Notifications: The City shall report any instance of non-compliance, including SIU non-compliance; and
- c. Compliance Progress. Each report shall include detailed updates on the progress of the compliance measures, including a description of activities completed, those scheduled for the next reporting period, and milestones achieved during the reporting period.

57. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 60 below, shall be submitted by electronic mail to: tipton.lantz@epa.gov.

58. 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 below:

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

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

Shane.Dodge@dnr.iowa.gov

Shane Dodge, Environmental Program Supervisor
Iowa Department of Natural Resources
1101 Commercial Court Suite 10
Manchester, Iowa 52057

60. 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

61. 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.

62. 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

63. 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

64. 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

65. 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

66. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

67. 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:

David Cozad
Director
Enforcement and Compliance Assurance Division

Shane McCain
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, City of Sanborn:

Randy Lyman
Signature

4-16-25
Date

Randy Lyman
Name

Mayor
Title

Certificate of Service

I certify that on the date noted below I 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 electronic mail, receipt confirmation requested, to:

r_c_lyman@hotmail.com
The Honorable Randy Lyman
Mayor, City of Sanborn
201 South Western Street
Sanborn, Iowa 51248

and via electronic mail to:

Shane.Dodge@dnr.iowa.gov
Shane Dodge, Environmental Program Supervisor
Iowa Department of Natural Resources
1101 Commercial Ct Ste 10
Manchester, Iowa 52057

Signature