

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF
ALTA, IOWA

A Municipality

Proceeding under Section 309(a)(3)
Of the Clean Water Act,
33 U.S.C. §1319(a)(3)

)
) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
) ON CONSENT

)
) Docket No. CWA-07-2009-0092

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE ON CONSENT ("Order on Consent") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. The City of Alta, Iowa (hereafter "Respondent" or "City") owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater.

3. The Iowa Department of Natural Resources ("IDNR") is the agency within the State of Iowa that has been authorized to administer the federal National Pollutant Discharge Elimination System ("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.

4. The City and EPA agree that issuance of this Order on Consent will provide protection for human health and the environment. In entering into this Order on Consent, the City agrees to make every effort to diligently and expeditiously implement the measures identified herein to correct current deficiencies with the City's POTW and to improve the management, operation and maintenance of the City's entire wastewater infrastructure, with an emphasis on both sustained incremental improvements and long term stability. EPA agrees to work closely with the IDNR to coordinate oversight of, and support for, the City's efforts. All parties agree that coordination and communication are essential in successfully implementing this Order on Consent and the underlying improvements for

the City's POTW, and further agree that the highest priority for the City is to focus its resources - financial, workforce and administrative - on improving the City's wastewater operations, management and infrastructure.

5. The City, upon consenting to the issuance of this Order on Consent, admits the jurisdictional allegations and neither admits nor denies the factual allegations set forth below.

II. Jurisdiction and Findings of Violation

Upon Consent of the parties by their attorney and/or authorized representatives, EPA finds:

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, permits issued under the authority of 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.
7. The City is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
8. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.
9. 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.
10. Respondent's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
11. On February 10, 2003, IDNR issued to the City Iowa NPDES Permit No. 1108001 (hereafter "NPDES permit") for discharges from its POTW to Dry Run Creek, a tributary of the Little Maple River. The City's NPDES Permit expired in February 2008. The NPDES permit was amended in September 2007 to incorporate a treatment agreement between the City and Gull Wing Industries. The requirements of the 2003 NPDES permit are in effect until a new NPDES permit is issued.
12. The Effluent Limitations and Monitoring Requirements Section of the City's NPDES permit establishes Total Suspended Solids ("TSS"), five-day biochemical oxygen demand ("BOD₅"), and pH effluent limits for 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 compliance with 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.

13. 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.

14. Respondent's NPDES permit incorporates by reference Standard Conditions, several provisions of which are summarized below:

a. Section 14: Twenty-Four Hour Reporting - requires reporting to IDNR within 5 days of any failure to comply with the daily maximum effluent limitations of the NPDES permit, and within 24 hours of any noncompliance with the permit that may endanger human health or the environment;

b. Section 21: Bypasses - Bypass, the intentional diversion of waste streams from any portion of a treatment facility, are prohibited unless excepted by Section 21 of the Standard Conditions of Respondent's NPDES Permit.

15. 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). Included in the inspection was observation of the City's POTW.

16. Within the past five years, the City has experienced discharges from the POTW's wastewater treatment facilities in excess of the design treatment capacity of the WWTP.

17. Within the past five years, the City has exceeded its weekly average and monthly average NPDES permit limitations for TSS and CBODs, 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 CBODs 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.

18. 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 NPDES permit limitations 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 NPDES permit limitations for CBOD₅ during the months of January 2005, August 2005, January 2006, April 2007, May 2007, and April 2008.

19. Within the past five years, the City has experienced a discharge of untreated wastewater from manholes, pump stations, sewer line breaks and/or other locations within the City's wastewater collection system, also known as sanitary sewer overflows ("SSOs").

20. Each discharge of pollutants as identified in Paragraphs 16 through 19 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).

III. Order for Compliance on Consent

21. Based on the Findings set forth above, and pursuant 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS and the City CONSENTS to the requirements set forth hereafter in this Order on Consent.

22. The City shall construct a WWTP in accordance with a Facility Plan approved by IDNR, in accordance with the following schedule:

- a. The City shall respond to IDNR's March 09, 2009 Facility Plan comment letter by November 1, 2009;
- b. Construction shall begin no later than twelve months after IDNR's approval of the Facility Plan; and
- c. Construction shall be completed no later than twenty-four months after IDNR's approval of the Facility Plan.

The City shall submit monthly status reports to EPA regarding the construction of the Wastewater Treatment Plant, until construction is completed.

23. The City shall establish and/or continue a program for routine and systematic inspection, maintenance and repair of the collection system. This program shall, at a minimum: (1) identify areas within the collection system that have excessive inflow and infiltration ("I/I"), such that these conditions are causing and/or contributing to effluent limit violations, SSOs, backups, overloading and/or bypasses at the WWTP; (2) identify and quantify sources of I/I within the areas of the collection system determined to have excessive I/I rates; (3) identify unauthorized connections, such as inflow sources; and (4) identify and quantify (frequency, volume, water quality) bypass events at the WWTP and the cause(s) of such bypass events (e.g., I/I, capacity issues other than I/I).

24. Within six (6) months of receipt of this Order on Consent, the City shall submit to EPA and IDNR a Continuing Improvement Plan ("CIP"), which identifies all known short and long term capital investment projects and operation and maintenance activities the City anticipates will be necessary to ensure current and long term compliance with the City's NPDES permit. The CIP shall identify: (1) the specific anticipated projects/actions necessary to effectively and efficiently operate the wastewater treatment system and remain in compliance with the City's NPDES permit; (2) time tables for execution of such projects/actions; and (3) financial resources needed to successfully accomplish such projects/actions. The CIP shall further identify the specific source or sources of funding for such projects/actions, and if needed funds are not currently available or are not expected to be available at the time identified within the CIP for such project/action, the CIP shall identify options and time frames for securing such needed funding (e.g., submittal of grant or loan applications, increases in sewer user fees).

Approval of Submissions and Incorporation into the Order on Consent

25. Upon receipt, EPA and IDNR will review all documents submitted by Respondent pursuant to Paragraphs 22 through 24, and EPA shall approve such submittals or require modification and resubmittal of portions or all of the documents pursuant to Paragraph 26, below. Upon approval, documents submitted under Paragraphs 22 through 24 above, or resubmitted pursuant to Paragraph 26, below, shall be deemed incorporated into and become enforceable under this Order on Consent, or at EPA's discretion, shall be incorporated into, and become enforceable under, a separate order issued under the authority of the CWA.

Modification and Resubmission of Documents

26. If required by EPA pursuant to Paragraph 25, above, Respondent shall within forty-five (45) days of receipt of any written comments from EPA and/or IDNR regarding the documents submitted by Respondent pursuant to this Order on Consent, make modifications and changes to such documents as directed by EPA, and resubmit the documents to EPA and IDNR. The parties may agree, in writing, to a longer period of time for resubmission of such documents.

Submissions

27. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Berla Johnson
Water Enforcement Branch
U.S. Environmental Protection Agency-Region 7
901 North Fifth Street
Kansas City, Kansas 66101

28. All documents required to be submitted to IDNR by this Order shall be submitted by mail to:

Dennis Ostwinkle
Supervisor
Field Office # 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353

Neil Cook
Field Office #3
Iowa Department of Natural Resources
Gateway North Mall
1900 North Grand Avenue
Spencer, IA 51301

Emy Wenxin Liu
Wastewater Engineering Section
Water Quality Bureau
Iowa Department of Natural Resources
502 East 9th Street, Des Moines, Iowa 50319-0034

Certification

29. All submissions made by Respondent to EPA and IDNR pursuant to the requirements of this Order on Consent shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

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 submissions of false information.

IV. General Provisions

Dispute Resolution

30. Unless otherwise expressly provided for in this Order on Consent, the dispute resolution procedures of this Section shall be an exclusive mechanism for resolving disputes arising under this Order. The City and EPA shall attempt to resolve any disagreements concerning this Order expeditiously and informally. The IDNR may be consulted and/or invited to participate in the dispute resolution process by EPA.

31. If the City objects to any EPA action taken pursuant to this Order on Consent, it shall notify EPA in writing of their objection(s) within fifteen (15) days of such action, unless the objection(s) has/have been resolved informally. EPA and the City shall have fifteen (15) days from EPA's receipt of the City's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

32. Any agreements reached by EPA and the City pursuant to this Section shall be in writing and shall, upon signature by both EPA and the City, be incorporated into and become an enforceable part of this Order on Consent. If the City and EPA are unable to reach an agreement within the Negotiation Period, the disputed matter may be referred to EPA Region 7's Regional Judicial Officer ("RJO"), who will issue a written decision. The RJO's decision shall be incorporated into and become an enforceable part of this Order. The City's obligation under this Order on Consent shall not be tolled by submission of any objection for dispute resolution under this Section, provided however, that the RJO may establish new timelines and dates regarding performance of the disputed matter as part of any written decision provided herein. Following resolution of the dispute, as provided by this Section, the City shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether the City agrees with the decision.

Effect of Compliance with the Terms of this Order for Compliance on Consent

33. Compliance with the terms of this Order on Consent shall not relieve Respondent of liability for, or preclude 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.

34. 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. 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 on Consent. Issuance of this Order on Consent 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 whatsoever.

Access and Requests for Information

35. Nothing in this Order on Consent shall limit 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

36. 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.

Effective Date

37. The terms of this Order on Consent shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order on Consent.

Termination

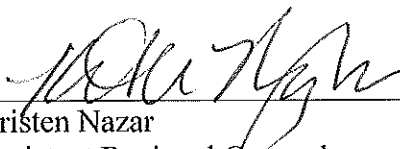
38. This Order on Consent shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met, as described in Section 7 of Appendix A to this Order on Consent.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 26th day of October, 2009.

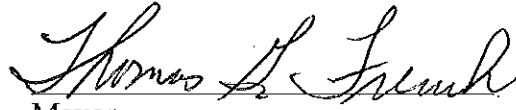


William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

FOR THE CITY OF ALTA, IOWA



Mayor
City of Alta, Iowa

Oct 7 2009
Date

CERTIFICATE OF SERVICE

I certify that on the date noted below I sent a copy the foregoing Findings of Violation and Order for Compliance on Consent by first class certified mail, return receipt requested, to:

Honorable Mayor and City Council
City of Alta, Iowa
City Hall
223 Main Street
Alta, Iowa 51002

Dennis Ostwinkle
Supervisor
Field Office # 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353

Neil Cook
Field Office #3
Iowa Department of Natural Resources
Gateway North Mall
1900 North Grand Avenue
Spencer, IA 51301

Emy Wenxin Liu
Wastewater Engineering Section
Water Quality Bureau
Iowa Department of Natural Resources
502 East 9th Street, Des Moines, Iowa 50319-0034

10/28/09
Date

Kimberly Keyser