

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)
)
The City of Waterloo, Iowa) Docket No. CWA-07-2011-0014
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318(a) and 1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the City of Waterloo, Iowa (“Respondent” or “the City”), a municipality chartered under the laws of the State of Iowa (“Iowa”). Respondent is the owner and/or operator of the Municipal Separate Storm Sewer System (“MS4”), located within the corporate boundary of the City, in Black Hawk County, Iowa.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, *inter alia*, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for various categories of stormwater discharges. Section 402(p)(2) requires permits for five categories of stormwater discharges. Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), requires permitting for additional categories of stormwater discharges based on the results of studies conducted pursuant to Section 402(p)(5) of the CWA, 33 U.S.C. § 1342(p)(5).

6. Pursuant to Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), EPA promulgated regulations (“Phase II stormwater regulations”) at 40 C.F.R. Part 122 setting forth the additional categories of stormwater discharges to be permitted and the requirements of the Phase II program.

7. 40 C.F.R. § 122.26(a)(9)(i)(A) states that on or after October 1, 1994, for discharges composed entirely of stormwater . . . operators shall be required to obtain a NPDES permit . . . if the discharge is from a small municipal separate storm sewer system required to be regulated pursuant to 40 C.F.R. § 122.32.

8. 40 C.F.R. § 122.26(b)(8) defines “municipal separate storm sewer” as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- (ii) designed or used for collecting or conveying storm water;
- (iii) which is not a combined sewer; and
- (iv) which is not part of a Publicly Owned Treatment Works (“POTW”) as defined at 40 C.F.R. § 122.2.

9. 40 C.F.R. § 122.26(b)(16) defines “small municipal separate storm sewer system,” in part, as all separate storm sewers that are:

- (i) owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body . . . having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes [. . .];
- (ii) not defined as “large” or “medium” municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7), or designated under paragraph (a)(1)(v) of this section.

10. 40 C.F.R. § 122.32(a) provides that a small MS4 is regulated if:

- (i) the small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census; or

- (ii) the MS4 is designated by the NPDES permitting authority, including where the designation is pursuant to §§ 123.35(b)(3) and (b)(4), or is based upon a petition under § 122.26(f).

11. The Iowa Department of Natural Resources (“IDNR”) is the agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Factual Background

12. Respondent is a municipality chartered under the laws of Iowa, and, as such, is a “person” as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

13. Respondent operates a stormwater drainage system consisting of, among other things, drain inlets, storm sewers, and outfalls, and as such is a “municipal separate storm sewer” as that term is defined in 40 C.F.R. § 122.26(b)(8).

14. At all times relevant to this Order, Respondent owned and/or operated a municipal separate storm sewer system, which does not meet the criteria to be a large or medium MS4, and thus is the owner and/or operator of a “small municipal separate storm sewer system,” as defined by 40 C.F.R. § 122.26(b)(4)(i).

15. Respondent’s small MS4 is located in the Waterloo, Iowa “urbanized area” as defined by the 2000 Census, and therefore, at all times relevant to this Order, Respondent’s small MS4 is subject to regulation.

16. Respondent’s small MS4 is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. Respondent discharged pollutants into “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

18. Discharges from Respondent’s small MS4 result in the addition of pollutants from a point source to navigable waters, and thus are the “discharges of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

19. Respondent’s discharges from a small MS4 require a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. § 122.32.

20. IDNR issued a Final Permit for discharges from Respondent’s small municipal separate storm sewer system under the NPDES, Permit No. IA0078301. This Final Permit was issued on May 10, 2004, and expired on May 9, 2009. A new permit was issued on May 10, 2009.

21. In May 2009, the City submitted its 2008 annual report to IDNR.

Findings of Violation

22. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

Violation of Public Education and Outreach Requirements

23. Part II.A.3 of the City's original and current NPDES permits requires the City to conduct public meetings with Neighborhood Associations to present information about its stormwater management plan and discuss stormwater pollution control and related issues. Both the original and current permits require the City to hold at least six meetings each year, beginning April 1, 2005, and continuing for the duration of the permits.

24. The annual report referenced in Paragraph 21 above, revealed that the City failed to conduct the requisite number of public meetings each year. Specifically, the City did not hold any public meetings or make any presentations regarding stormwater management during 2008.

25. The City's failure to comply with the public education and outreach permit requirements is a violation of its permit, and, as such, is a violation of Section 402 of the CWA.

Post-construction Stormwater Management Violations

26. Part II.E.1 of the City's original NPDES permit required the City to adopt and enforce an ordinance that addresses the control of runoff from building activities after construction has been completed. The permit requires the City to adopt such an ordinance no later than April 1, 2007. Part II.E.1 of the City's current NPDES permit requires the City to continue to enforce the ordinance for the duration of the permit.

27. The annual report referenced in Paragraph 21 above, revealed that the City failed to timely adopt a post-construction stormwater management ordinance. At the time the annual report was written, the City had not passed a post-construction ordinance.

28. Part II.E.3 of the City's original NPDES permit required the City to develop and make available to landowners educational materials that outline proper maintenance procedures. The permit required the City to develop the educational materials no later than April 1, 2007, and make them available for the permit's duration. Part II.E.3 of the City's current NPDES permit continues the requirement that the City must make the educational materials available for the duration of the permit.

29. The annual report referenced in Paragraph 21 above, revealed that the City failed to timely develop and make available the requisite educational materials. At the time the annual report was written, no such materials had been developed.

30. Part II.E.4 of the City's original NPDES permit required the City to develop and implement a watershed assessment program and comprehensive land use plan in order to reduce flooding, erosion and degradation of fish/wildlife habitat, and to improve water quality. The permit required the City to establish the program no later than April 1, 2007, and to implement it for the duration of the permit. Part II.E.4 of the City's current NPDES permit continues the requirement that the City must implement the watershed assessment program and comprehensive land use plan for the duration of the permit.

31. The annual report referenced in Paragraph 21 above, revealed that the City failed to timely establish and implement a watershed assessment program and comprehensive land use plan. Specifically, the annual report states that watershed assessment will not occur until a stormwater fee is passed.

32. The City's failure to fully comply with the post-construction stormwater management permit requirements is a violation of its permit and, as such, is a violation of Section 402 of the CWA.

Pollution Prevention/Good Housekeeping Violations

33. Part II.F.1 of the City's original NPDES permit required the City to develop and implement a program for inspecting, maintaining, and cleaning all components of the MS4, including street cleaning. All components must be inspected at least once every five years; maintenance must be performed as appropriate. The permit required the City to implement the program no later than April 1, 2005. Part II.F.1 of the City's current NPDES permit continues the requirement that the City implement this program.

34. The annual report referenced in Paragraph 21 above, revealed that the City failed to develop and implement a program for inspecting, maintaining, and cleaning all components of its MS4. The annual report confirms that the City performs these activities only "as time and funding allows."

35. Part II.F.3 of the City's original NPDES permit required the City to develop a program for training municipal employees regarding practices to be implemented in city operations to reduce pollutants in stormwater. The permit required the City to have developed and implemented the training program no later than April 1, 2005, and to continue to implement the program for the duration of the permit. Part II.F.3 of the City's current NPDES permit continues the requirement that the City must implement the training program for the duration of the permit.

36. The annual report referenced in Paragraph 21 above, revealed that the City has not implemented its employee training program throughout the permit terms as required. Specifically, the City has not conducted employee training since the second year of the original permit term.

37. Part II.F.4 of the City's original NPDES permit required the City to develop and implement a program to assess BMPs that would reduce pollutants in stormwater from city facilities. The BMPs must then be implemented whenever practical. The permit required the City to implement this program no later than April 1, 2006, and to continue to implement it for the duration of the permit. Part II.F.4 of the City's current NPDES permit continues the requirement that the City must implement the BMP assessment program for the duration of the permit.

38. The annual report referenced in Paragraph 21 above, revealed that the City has not implemented its BMP assessment program throughout the permit terms. Specifically, the City has not assessed BMPs at city-owned facilities since the second year of its original permit term.

39. The City's failure to fully comply with the good housekeeping and pollution prevention permit requirements is a violation of its permit and, as such, is a violation of Section 402 of the CWA.

Reporting Violation

40. Part III of the City's original and current NPDES permits require the City to prepare and submit an annual report that includes a summary describing the number and nature of, *inter alia*, inspections and components of the MS4 cleaned.

41. The annual report referenced in Paragraph 21 above, did not include a summary describing the number and nature of City inspections of public stormwater control devices and structures.

42. The City's failure to fully comply with the annual reporting permit requirement is a violation of its permit, and, as such, is a violation of Section 402 of the CWA.

Order for Compliance

43. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), Respondent is hereby ORDERED to take the actions described below.

44. Within thirty (30) days of the effective date of this Order, the City shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the requirements of its NPDES permit.

45. Within sixty (60) days of the effective date of this Order, the City shall provide to EPA and IDNR a written description of the actions the City has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

46. In the event that the City believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the City shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time. The City shall also submit quarterly progress reports documenting actions taken to correct remaining deficiencies, with the first report due March 15, 2011.

Submissions

47. All documents required to be submitted to EPA pursuant to Paragraph 42 of this Order shall be submitted by mail to:

Ms. Cynthia Sans
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

48. All documents required to be submitted to IDNR pursuant to Paragraph 42 of this Order shall be submitted by mail to:

Mr. Joe Sanfilippo
Field Office #1
Iowa Department of Natural Resources
909 West Main Street, Suite #4
Manchester, Iowa 52057-1522.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

49. Compliance with the terms of this Order 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.

50. Compliance with the terms of this Order 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.

51. 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. 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 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

52. Nothing in this Order 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

53. 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.

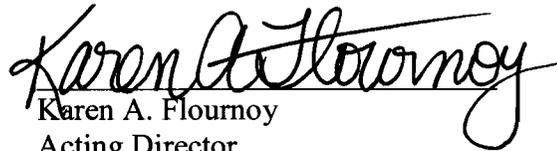
Effective Date

54. 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 EPA.

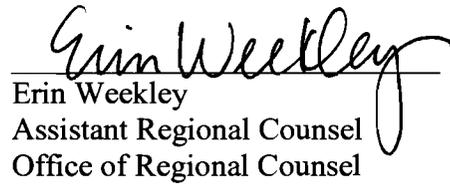
Termination

55. This Order 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.

Issued this 10th day of February 2010.



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division



Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel

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 to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

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

The Honorable Buck Clark
Mayor, City of Waterloo
715 Mulberry Street
Waterloo, Iowa 50703-5714,

and via first class mail to:

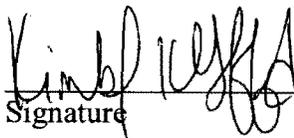
Mr. Joe Sanfilippo
Field Office #1
Iowa Department of Natural Resources
909 West Main Street, Suite #4
Manchester, Iowa 52057-1522

and

Mr. Dennis Ostwinkle
Field Office #6
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353-1623.

FEB 11 2011

Date



Signature