

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

IN THE MATTER OF )  
 )  
THE CITY OF GUTTENBERG, IOWA )  
 )  
Respondent )  
 )  
 )  
Proceedings under Section 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3) )  
 )

Docket No. CWA-07-2010-0140  
  
FINDINGS OF VIOLATION  
AND ORDER FOR COMPLIANCE

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and ORDER 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 Guttenberg, 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 state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

**II. Jurisdiction and Findings of Violation**

4. 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 Section 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.

5. The City is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.

7. The City's POTW is a "point source" that "discharges pollutants" into "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Respondent's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

9. On March 24, 2009, IDNR issued to the City NPDES Permit No. IA-0022284 (hereafter "NPDES permit") for discharges from its POTW to the Mississippi River.

10. The Design Capacity section of the City's NPDES permit limits the amount of flow into the POTW at: 0.2580 million gallons a day ("MGD") for average dry weather flow; .4000 MGD for average wet weather flow, and; 0.400 MGD for maximum wet weather flow.

11. The Standard Conditions section of the City's NPDES permit prohibits sanitary sewer overflows ("SSOs") and bypasses.

12. The Standard Conditions section of the City's NPDES permit requires Respondent to operate all POTW facilities as efficiently as possible and to maintain all POTW facilities in good working order.

13. The Effluent Limitations section of the City's NPDES permit requires Respondent to meet at least an 85% removal efficiency for Carbonaceous Biochemical Oxygen Demand ("CBOD").

14. The Monitoring and Reporting Requirements section of the City's NPDES permit require Respondent to record all monitoring results and report results to IDNR.

15. Between August 24 and 27, 2009, EPA performed an inspection of the City of Guttenberg ("City") wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its NPDES permit and the CWA. On April 27, 2010, the City responded to EPA's March 20, 2010 Request for Information, issued under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspection and response to EPA's Request for Information revealed the following:

a. Between January 2006 and May 2009, the City violated its NPDES permit limits for flow at least six times. .

b. Since January 1, 2005, the City bypassed the sewer collection system at least six times and had at least three SSOs

- c. The wastewater plant lagoons liners showed signs of significant deterioration, including vegetation growing out of the liner and portions of the liner floating on the surface of the lagoon.
- d. The City failed to meet the removal efficiency requirement for CBOD on August 25, 2009.
- e. The City does not keep accurate calibration records for its pH meter nor does it report pH monitoring results to IDNR.

16. The violations identified in paragraph 15 are violations 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, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **III. Order For Compliance**

17. Based on the Findings set forth above, and pursuant 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED as follows:

18. Respondent shall immediately comply with its NPDES permit and the CWA.

19. Within thirty (30) days of receipt of this Order, Respondent 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 applicable requirements of its NPDES permit.

20. Within thirty (30) days of receipt of this Order, the Respondent shall submit a written report to EPA and a copy to IDNR detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

21. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of receipt of this Order, the Respondent 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, as well as measures to prevent these or similar violations from recurring.

22. The City shall implement and comply with the terms set forth in the "Sanitary Sewer System Improvements" plan submitted to EPA on May 3, 2010 (Attachment A). Pursuant to this plan, the City shall:

- a. Complete repair of existing I&I sources by October 30, 2010.

- b. Complete construction of new Main Lift Station and force main by December 30, 2010.
- c. Complete Wastewater Treatment Plant upgrade by December 30, 2010.
- d. Complete Herman Street Lift Station and force main upgrade by November 30, 2011.
- e. Complete construction of North Lift Station, force main and gravity main by November 30, 2011.

23. Respondent shall submit annual status reports to EPA. These reports shall detail the status of the system and plant upgrades, as well as the NPDES Permit compliance. The reports shall be due by January 15<sup>th</sup> of the following year until the upgrades are complete.

#### **Submissions**

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

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

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

Joe Sanfilippo  
Field Office # 1  
909 West Main, Suite 4  
Manchester, Iowa 52057

#### **Certification**

26. All submissions made by Respondent to EPA and IDNR pursuant to the requirements of this Order 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**

##### **Effect of Compliance with the terms of this Order**

27. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

28. 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 Section 309 of the CWA, 33 U.S.C. § 1319, 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**

29. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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**

30. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial 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.

##### **Parties Bound**

31. This Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

##### **Effective Date**


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


**Termination**

33. 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.

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Issued this 14th day of September, 2010.

  
for William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

  
Chris Muehlberger  
Assistant Regional Counsel

CERTIFICATE OF SERVICE

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

The Honorable Gerald Block  
City of Guttenberg  
P.O. Box 580  
502 South First Street  
Guttenberg, Iowa 52052.

I further certify that on the date noted below I sent a copy the foregoing Findings of Violation and Order by first class mail to:

Dennis Ostwinkle  
Iowa Department of Natural Resources  
1023 West Madison Street  
Washington, Iowa 52353-1623

Joe Sanfilippo  
Field Office # 1  
909 West Main, Suite 4  
Manchester, Iowa 52057

9.16.10

Date

