

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

11/17/15 10:14:00

EM/3  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
 )  
**The City of Council Bluffs, Iowa** )  
 )  
Respondent )  
 )  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )

Docket No. CWA-07-2011-0050

FINDINGS OF VIOLATION AND  
ORDER FOR COMPLIANCE

**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 Council Bluffs, Iowa (“Respondent” or “the City”), a municipality chartered under the laws of the State of Iowa. Respondent is the owner and/or operator of the Municipal Separate Storm Sewer System (“MS4”), located within the corporate boundary of the City of Council Bluffs, Pottawatomie 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 ("MS4") 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 CFR 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:

- a. 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 [ . . . ];
- b. 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:
- a. the small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census; or
  - b. 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 the State 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 City’s “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 the City's small municipal separate storm sewer system under the NPDES, Permit No. IA0078271. This Final Permit was issued on July 29, 2004, and expired on July 28, 2009. This permit has been administratively extended until a new permit can be issued.

21. On August 24-26, 2010, an EPA inspector performed an audit of the MS4 for the City of Council Bluffs, Iowa under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the City's compliance with its NPDES MS4 permit, in accordance with the CWA.

#### **Findings of Violation**

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

#### **Public Education and Outreach on Stormwater Impact Violations**

23. Part II.B of the City's permit requires the City to establish a storm water advisory committee to participate in decision-making, hold public hearings and work with volunteer groups. The group shall be established by the Public Works Department no later than April 1, 2005 and meetings shall be held at least once each year for the remainder of the duration of the permit.

23. The EPA inspection found that no public meetings have been held by the City, as of August 2010.

24. The City's failure to conduct proper public education and outreach on stormwater impacts is a violation of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Illicit Discharge Detection and Elimination Violations**

25. Part II.C of the City's permit requires the City to perform annual dry weather flow inspections and conduct sampling and analyses of dry weather flows as necessary.

26. The EPA inspection found that the initial inventory of storm water outfalls occurred in the years 2005 and 2006, but subsequent dry weather outfall inspections have not occurred. The EPA inspection also documented that the City conducts visual inspections, but does not conduct regular sampling and analyses of the outfalls, as required by the City's permit.

27. Part II.C of the City's permit requires the City to establish procedures to identify the sources of dry weather flows and to develop and implement a monitoring plan no later than April 1, 2005, to continue for the remainder of the duration of the permit.

28. The EPA inspection found that the City has not developed a regulator dry weather monitoring plan, and that work is instead conducted on the basis of reported complaints.

29. The City's failure to fully develop a program to detect and eliminate illicit discharges is a violation of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Construction Site Stormwater Runoff Control Violations

30. Part II.D.1 of the City's permit requires the City to conduct site plan and pollution prevention plan review and approval prior to issuance of any permits for construction activities for which an NPDES permit is required. The program shall require compliance with the Department's General Permit #2 and inspections by the City of all sites for which coverage under General Permit #2 is required. The program shall require each of these sites be inspected by the City at least twice each calendar year and as complaints are received. The program shall be implemented no later than April 1, 2005, and continue for the remainder of the duration of the permit.

31. The EPA inspection found that the City was not conducting construction site inspections at the frequency required by the permit.

32. The City's failure to conduct timely inspections and conduct inspections at the frequency required by the permit is a violation of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Post-Construction Stormwater Management Violations

33. Part II.E.1 requires the City to develop an ordinance which will address the control of runoff from building activities after construction has been completed. The ordinance shall require water quality and quantity components to be considered in the design of new construction and to be implemented when practical. The ordinance shall promote the use of storm water detention and retention, grass swales, bioretention swales, riparian buffers and proper operation and maintenance of these facilities. The ordinance shall be adopted by the City no later than April 1, 2007, and these responsibilities continue for the remainder of the duration of the permit.

34. The EPA inspection found that the City had not yet developed and implemented an ordinance regarding post-construction management of stormwater. In addition, from 2004 through 2010, the City had no procedures or acceptance criteria in place regarding assurance that post-construction runoff controls at all construction sites requiring NPDES permits have been implemented.

35. Part II. E.3 states that the City must develop educational materials which outline proper maintenance procedures and make them available to landowners. The City shall properly maintain its own control devices and structures. The educational materials shall be developed no later than April 1, 2006, and made available for the remainder of the duration of the permit.

36. The EPA inspection documented that the City has not developed educational materials for landowners.

37. The City's failure to adequately develop aspects of their post-construction management program is a violation of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Pollution Prevention and Good Housekeeping Violations

38. Part II.F.3 of the City's permit requires that the City develop an operations manual and program for training municipal employees regarding practices to be implemented in city operations to reduce pollutants in storm water. The program shall be developed and implemented no later than April 1, 2006, and continue for the remainder of the duration of the permit.

39. The EPA inspection found that the City has allotted funds towards this permit requirement, but no operations manual or program has been developed since the April 2006 deadline.

40. The City's failure to fully comply with the good housekeeping and pollution prevention permit requirements is a violation of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Reporting Requirement Violations

41. Part III of the City's permit requires the City to prepare an annual report and submit it to IDNR no later than April 1<sup>st</sup> of each calendar year with the first report due in calendar year 2005.

42. The EPA inspection found that the City failed to submit annual reports according to the requirements of its permit. Specifically, the City has only submitted one annual report, which was a report for the year 2008 and was submitted on February 8, 2010.

43. The City's failure to submit annual reports at the frequency and schedule required is a violation of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **Order for Compliance**

44. 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.

45. 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 applicable requirements of its MS4 permit.

46. Within sixty (60) days of the effective date of this Order, the City shall provide 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.

47. In the event that the City believes complete correction of the violations cited herein is not possible within thirty 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 within ninety (90) days of the effective date of this Order.

### **Submissions**

48. All documents required to be submitted to EPA pursuant to Paragraphs 46 or 47 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.

49. All documents required to be submitted to IDNR pursuant to Paragraph 46 of this Order shall be submitted by mail to:

Holly Vandemark, Stormwater Coordinator  
Field Office #4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022

## **General Provisions**

### **Effect of Compliance with the Terms of this Order for Compliance**

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.

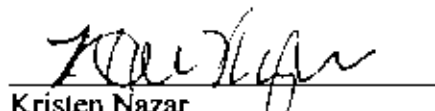


### Termination

55. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 12th day of May, 2011.

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

  
Kristen Nazar  
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 Tom Hanafan  
Mayor, City of Council Bluffs  
209 Pearl Street  
Council Bluffs, Iowa 51503-4270  
Public Works Director  
209 Pearl Street  
Council Bluffs, Iowa 51503-4270

and via first class mail to:

Holly Vandemark, Stormwater Coordinator  
Field Office #4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022

Mr. Ed Tormey  
Bureau Chief, Legal Services  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319

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

5/17/11

Date

  
Signature