

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2017-0208
THE CITY OF WEST LIBERTY,	)	
IOWA	)	FINDINGS OF VIOLATION AND
Respondent	)	ADMINISTRATIVE ORDER FOR
	)	COMPLIANCE ON CONSENT
	)	
Proceeding under Sections 309(a)(3) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)(3)	)	
_____	)	

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to the city of West Liberty, Iowa (“City” or “Respondent”), pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands, and Pesticides Division.

2. The EPA, together with the City, enter into this Section 309(a)(3) Order for Compliance on Consent in order to carry 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.”

3. It is the parties’ intent through this agreement to address discharges of pollutants by the City into the waters of the United States and other violations of its National Pollutant Discharge Elimination System (“NPDES”) permit. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful.

4. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent 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, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

## II. Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into a navigable water of the United States, 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 only in accordance with the terms of a NPDES permit issued pursuant to that Section.

6. 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.

7. 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, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. 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.

9. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

10. 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 CWA, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

## III. EPA Allegations

### Allegations of Fact and Law

11. The City of West Liberty is a political subdivision of the state organized under the laws of Iowa, and as such is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all relevant times, the City owned and operated a wastewater treatment facility (“WWTF”) and its associated sewer collection and transmission systems, which receive and

treat wastewater from residential, commercial, and industrial connections within West Liberty, Iowa, and which together are a POTW, as defined by 40 C.F.R. § 403.3(q).

13. The City's WWTF discharges to Wapsinonoc Creek, which is a "navigable water" and a "water of the United States" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

14. Effluent from the City's POTW is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

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

17. On July 9, 2009, EPA issued Respondent a Findings of Violation and Administrative Compliance Order for violations of the CWA, including Sanitary Sewer Overflows ("SSOs"), exceedances of Respondent's NPDES permitted flow, Total Suspended Solids and Ammonia Nitrogen limits, and unauthorized bypasses. The Order was terminated by EPA on November 9, 2012.

18. On October 2, 1991, IDNR issued a NPDES permit to the city of West Liberty for discharges from the WWTF to Wapsinonoc Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES permit. IDNR administratively extended the permit in 1996. On September 1, 2013, IDNR re-issued NPDES Permit No. IA0031691 (hereafter "NPDES Permit") to the City and it will expire on August 31, 2018.

19. On January 9 - 11, 2017, an EPA representative performed a SSO Inspection (hereafter "the EPA inspection") of the City's wastewater collection system 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.

20. During the EPA inspection, the inspector reviewed the City's records related to the wastewater collection system, conducted a visual inspection of eight City lift stations, and completed a SSO inspection checklist. The EPA inspector's observations regarding the City's wastewater collection system included, but were not limited to:

a. It appeared that a number of SSOs and bypasses of partially treated wastewater at the wastewater treatment plant had occurred over the previous five years;

b. The City had failed to properly maintain and operate the collection system in accordance with the requirements of the NPDES permit;

c. City personnel were not adequately documenting field observations to assist in identifying causes of and preventing further instances of sewer backups and SSOs; and

d. The City did not report all SSOs to IDNR as required by the City's NPDES permit.

21. On or about March 7, 2017, EPA issued the City an information request pursuant to Section 308 of the CWA. On or about April 18, 2017, the City responded to such request.

22. On or about May 1, 2017, EPA requested and received from IDNR copies of the electronic monthly monitoring reports ("MMRs") filed by the City covering the reporting periods from September 2013 through February 2017.

#### Findings of Violation

#### **Unpermitted Discharges**

23. Respondent's NPDES Permit authorizes the discharge of pollutants only from a specified point source, identified in the NPDES Permit as "Outfall 001," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permit. Respondent's previous NPDES permit contained the same Standard Condition concerning unauthorized discharges.

24. Within the past five years, the City has discharged untreated wastewater from overflows at manholes and/or from other locations within the City's collection system, also known as SSOs. None of the locations of these discharges are the Outfall 001 identified in the NPDES permits.

25. The City's unpermitted discharges from its collection system described above were reported to the IDNR as having occurred on at least April 17, 2013, June 30 and September 10, 2014, and on August 29, 2016, and may have occurred on other unreported dates.

26. Each discharge of pollutants from any location other than a permitted outfall, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Unauthorized Bypasses**

27. Standard Condition 23 of the City's NPDES Permit states that any bypass is prohibited unless: it is unavoidable to prevent loss of life, personal injury, or severe property damage; there are no feasible alternatives to the bypass; and notices are submitted as required

by this section of the permit. Respondent's previous NPDES permit contained the same Standard Condition concerning bypasses.

28. Within the past five years, the City has bypassed untreated or partially treated wastewater from the City's WWTF in violation of the Standard Condition 23 prohibition.

29. The City's unauthorized bypasses from the WWTF occurred on April 17-19, 2013, June 30-July 3, 2014 and September 9-11, 2014.

30. The unauthorized bypasses described in paragraphs 28 and 29 were reported to have discharged 18,880,000 gallons of untreated or partially treated wastewater into Wapsinonoc Creek.

31. Each discharge of pollutants from any location in violation of a permit prohibition, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Exceedances of WWTF Design Capacity**

32. The Design Capacity section of the City's NPDES permit states that wastes in such volumes or quantities as to exceed the design capacity of the treatment works or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of the treatment works and are prohibited.

33. The Design Capacity section of the City's NPDES permit further states the treatment plant is designed to treat an average dry weather ("ADW") flow of 1.3800 Million Gallons per Day ("MGD"), an average wet weather ("AWW") flow of 2.2100 MGD and a maximum wet weather ("MWW") flow of 4.6100 MGD.

34. The City exceeded the maximum wet weather flow of 4.6100 MGD on September 10, 2014.

35. The City's failure to comply with the monitoring and reporting requirements of the City's NPDES permit as described above is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

#### **Failure to Comply with Effluent Limitations**

36. The Effluent Limitations section of the City's NPDES permit establishes effluent limitations for Outfall 001, including the following:

a. Five Day Carbonaceous Biochemical Oxygen Demand (“CBOD5”) – 7-day average concentration of 40 milligrams per liter (mg/L), 30-day average concentration of 25 mg/L, 7-day average of 737.26 pounds per day (lbs/day) mass and 30-day average of 460.79 lbs/day mass;

b. Total Suspended Solids (“TSS”) - 7-day average concentration of 45 mg/L, 30-day average concentration of 30 mg/L, 7-day average of 829.41 lbs/day mass and 30-day average of 552.94 lbs/day mass; and

c. Ammonia Nitrogen – daily maximum concentration of 6.8 to 16.1 mg/L varying by month, 30-day average concentration of 1.4 to 7.9 mg/L varying by month, daily maximum mass of 106.9 to 295.3 lbs/day varying by month and 30-day average mass of 22.7 to 131.4 lbs/day varying by month.

Respondent’s previous NPDES permit contained the same effluent limits.

37. A review of the City’s response to EPA’s March 7, 2017 CWA Section 308 Request for Information showed that the City discharged CBOD5 in excess of the permitted 7-day average mass during the 7-day period ending April 21, 2013.

38. A review of the City’s response to EPA’s March 7, 2017 CWA Section 308 Request for Information showed that the City discharged TSS in excess of the permitted 7-day average mass during the 7-day periods ending April 21, 2013, June 30, 2014 and September 14, 2014

39. A review of the electronic MMRs showed that the City discharged Ammonia Nitrogen in excess of the permitted daily maximum concentrations and masses on July 22 and 23, 2015, and in excess of the permitted 30-day averages for concentration and mass for the month of July 2015.

40. The City’s failure to comply with the City’s NPDES permit effluent limitations as described above is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1342(a).

#### **Failure to Correctly Monitor and Report**

41. The Monitoring and Reporting Requirements section of the City’s NPDES permit stipulates (a) the frequency, method and location of sample collection and flow monitoring, (b) that the City is required to report all data including calculated results needed to determine compliance with the limitations contained in the permit, and (c) that results of all monitoring shall be recorded on forms provided by and submitted to the IDNR by the fifteenth day following the close of the reporting period.

42. Standard Condition 2 of the City's NPDES permit states 7-day average means the sum of the total daily discharges by mass, volume or concentration during a 7-consecutive day period, divided by the total number of days during the period that measurements were made. Four 7-consecutive day periods shall be used each month to calculate the 7-day average. The first 7-day period shall begin with the first day of the month.

43. Standard Conditions 13 and 14 of the City's NPDES require reporting for any noncompliance that may endanger human health or the environment including oral reporting within 24-hours of becoming aware of the noncompliance, a written submission within five days and reporting at the time of monitoring reports submittal for instances of noncompliance not otherwise reported.

44. A review of the electronic MMRs reveal that the City failed to monitor and report both concentration and mass of CBOD5, TSS and Ammonia Nitrogen for the first 7-day period in March 2017 on the monthly monitoring reports submitted to the IDNR.

45. A review of the electronic MMRs reveal that the City failed to report bypasses from the Storm Water Detention Basin on the monthly monitoring reports submitted to the IDNR for June, July and September 2014, November 2015 and August 2016.

46. The City failed to submit five day written reports of SSOs for which 24-hour oral notifications were made and failed to report them with the monthly monitoring reports for June and September 2014 and August 2016.

47. The City's failure to comply with the monitoring and reporting requirements of the City's NPDES permit as described above is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

#### **IV. Order for Compliance**

48. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and Respondent hereby AGREES, to take the actions described below:

49. Consistent with EPA's findings set forth above, the City agrees to undertake necessary actions with the goal of eliminating and preventing recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permit by no later than five (5) years from the effective date of this Order.

50. As soon as possible, but no later than 30 days from the effective date of this Order, the City shall submit to the EPA, with a copy to the IDNR, a report detailing the procedures the City has implemented to ensure the correct monitoring and reporting of all parameters and instances of noncompliance for which reporting is required by the City's NPDES permit.

51. As soon as possible, but no later than 60 days from the effective date of this Order, the City shall submit to the EPA, with a copy to the IDNR, a detailed schedule for the City to complete all work required to eliminate effluent limit violations, to identify and eliminate excess flows and/or increase conveyance and treatment capacity sufficient to prevent future unauthorized bypasses and discharges of partially or untreated wastewater, eliminate or temporarily store for subsequent treatment flow in excess of the treatment facility design capacity and bring the wastewater system into compliance with the City's NPDES permit. The schedule shall contain start and completion dates for all actions the City deems necessary to eliminate and prevent recurrence of the violations cited above as expeditiously as possible, but no later than five (5) years from the effective date of this Order.

52. As soon as possible, but no later than five (5) years from the effective date of this Order, the City shall certify to the EPA that it has taken all measures necessary to achieve compliance with its NPDES permit. Until that certification has been submitted, the City shall submit semi-annual reports in compliance with Paragraphs 55 through 57, below, describing progress made toward achieving compliance. Concurrently with submittal to the EPA, the City shall post a copy of each semi-annual report on its web site, <http://cityofwestlibertyia.org/press-release/>.

### **Submissions**

53. The City shall submit to the EPA, with a copy to the IDNR, reports on or before January 15 and July 15 of each year beginning January 15, 2018, describing the actions the City has taken during the six-month period ending the last day of the month prior to the report due date, to comply with the terms of this Order. The City's reports shall include, at a minimum:

- a. A description of all work in progress or completed to address and eliminate unpermitted discharges, eliminate bypasses at the WWTP that result in effluent limit violations and reduce flow to within the WWTP design capacity;
- b. A description of any changes in expected completion dates of scheduled work required to address and eliminate unpermitted discharges, bypasses at the WWTP that result in effluent limit violations, and reduction of flow to within WWTP design capacity, the reasons for such changes, and actions taken or planned to return to schedule;
- c. A description of all work scheduled for the next reporting period;
- d. A complete description, including volume, cause and waters impacted, of any unauthorized discharges occurring during the reporting period and specific measures taken by the City to correct and prevent recurrence of each unauthorized discharge; and

e. Either the Report ID assigned by IDNR to each unauthorized discharge report submitted during the reporting period or a copy of the respective unauthorized discharge report submitted to IDNR.

54. All work to be performed by the City to comply with the terms of this Order shall be completed no later than five (5) years from the effective date of this Order. If the City believes that despite its best efforts it will not be able to complete work necessary to address and eliminate unpermitted discharges, bypasses at the WWTP and reduction of flow to within WWTP design capacity as described above by no later than five (5) years from the effective date of this Order, the City may, as soon as it has credible knowledge anticipating such delay, submit a petition pursuant to Paragraph 67 of this Order to the EPA, with a copy to the IDNR, for an extension of time to complete such work. The request must be in writing and must describe the reason for the anticipated delay, the steps the City has taken to mitigate the cause(s) of the delay, and a date certain by which the City expects to complete the work.

55. All submissions by the City to the EPA pursuant to the requirements 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.*

56. All documents, including certifications, required to be submitted to the EPA by this Order, shall be submitted by electronic mail to:

dillard.wayne@epa.gov

Wayne Dillard, P.E., or his successor  
U.S. Environmental Protection Agency – Region 7  
Water, Wetlands and Pesticides Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this paragraph.

57. A copy of documents required to be submitted to the IDNR by this Order, shall be submitted by mail to:

Ted Petersen, or his successor  
Environmental Program Supervisor  
Iowa Department of Natural Resources  
Field Office # 5  
7900 Hickman Rd, Suite 200  
Windsor Heights, Iowa 50324-4432

58. After review of the information submitted by the City pursuant to the above Paragraphs, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

### **General Provisions**

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

59. 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. Section 309(g)(6) of the CWA, 33 U.S.C. § 1319(g)(6), addresses the effect of this Order on subsequent actions by the EPA or the State and with respect to citizen suits.

#### **Reservation of Rights**

60. 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, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.

61. Failure to comply with the terms of the Order may result in Respondent's liability for statutory civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the Order.

62. Subject to the limitations of Paragraph 61, above, Respondent reserves the right to contest liability in any subsequent action filed by the EPA to seek penalties for violation of this Order, and reserves the right to contest liability in any subsequent action filed by the EPA for any violations alleged in the Findings, above.

63. With respect to matters not addressed in this Order, the EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority,

including without limitation, the right to seek injunctive relief, monetary penalties and/or other legal remedies allowed by law.

### **Access and Requests for Information**

64. 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**

65. 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.

### **Effective Date**

66. This Order shall be effective upon signature of the EPA Region 7 Director, Water, Wetlands and Pesticides Division. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

### **Modification**

67. 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**

68. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

### **Signatories**

69. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

**For the Complainant, United States Environmental Protection Agency, Region 7:**

Issued this 16<sup>th</sup> day of NOVEMBER, 2017.

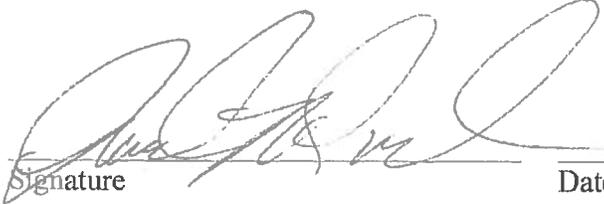


Jeffery Robichaud  
Acting Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency – Region 7



Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 7

**For the Respondent, City of West Liberty, Iowa:**

  
Signature \_\_\_\_\_ Date 11072017

LAWRENCE MCNAUL  
Name

CITY MANAGER  
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this 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 first class mail to:

The Honorable Robert Hartman,  
Mayor  
City of West Liberty  
City Hall  
409 N. Calhoun Street  
West Liberty, Iowa 52776,

and to:

Ted Petersen,  
Environmental Program Supervisor  
Iowa Department of Natural Resources  
Field Office # 5  
7900 Hickman Rd, Suite 200  
Windsor Heights, Iowa 50324-4432.

11.20.17

Date

