

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 )

) Docket No. CWA-07-2011-0068

THE CITY OF FAIRBANK, IOWA, )

) FINDINGS OF VIOLATION and  
) ORDER FOR COMPLIANCE

Respondent, )

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

**Preliminary Statement**

1. The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE 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”), 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. Respondent, the City of Fairbank, Iowa (hereafter “Respondent” or “City”), operates a Publicly Owned Treatment Works (“POTW”) in the State of Iowa that treats domestic wastewater.

**Statutory and Regulatory Framework**

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants 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 National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

4. 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.

5. To implement Section 402 of the CWA, 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.

6. As defined by 40 C.F.R. § 403.3(q), a 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.

7. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System (“NPDES”) program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

#### **Findings of Fact**

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

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

10. The City’s POTW discharges to the Little Wapsipinicon River, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

11. 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.

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

13. IDNR granted NPDES Permit No. IA-0035041 to Respondent for discharges from its POTW to the Little Wapsipinicon River. The permit (hereafter “2001 NPDES permit”) became effective April 13, 2001, and expired April 12, 2006. The 2001 NPDES permit has been administratively extended by IDNR.

14. The City's wastewater treatment facility, which discharges through Outfall 001, has a design flow of 127,000 gallons per day ("gpd") and experienced an average flow of approximately 135,000 gpd from 2006 through 2010.

15. On November 17 through 19, 2009, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of the City's 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.

16. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the 2001 NPDES permit, and observed the wastewater treatment facility. The EPA inspector's observations included, but were not limited to:

- a. numerous instances of noncompliance with the effluent limitations contained in the 2001 NPDES permit; and
- b. indications that current organic loading to the plant's lagoons may exceed the lagoons' treatment capacity.

17. On December 30, 2010, EPA received a response from the City to a request for information (hereafter "EPA Information Request") issued by EPA to the City on December 10, 2010, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

#### **Findings of Violation**

18. The facts stated in Paragraphs 8 through 17, above, are herein incorporated.

#### **Count I**

19. The Effluent Limitations section of the City's 2001 NPDES permit established limitations for Outfall 001, discharge from the wastewater treatment facility, including the following:

- a. ammonia – 30 day average concentration limitations varying, depending on the month, between 4.8 milligrams per Liter (mg/L) and 11 mg/L; daily maximum concentration limitations varying between 7.8 mg/L and 19 mg/L; 30 day average mass limitations varying between 4.4 ppd and 10 ppd; and daily maximum mass limitations varying between 7.2 ppd and 17 ppd;
- b. 5-day carbonaceous biochemical oxygen demand ("cBOD<sub>5</sub>") – 7 day average concentration limitation of 40 mg/L; 7 day average mass limitation of 42 pounds

per day (“ppd”); 30 day average mass limitation of 27 ppd; and compliance with a removal efficiency of 85%;

- c. total suspended solids (“TSS”) – 30 day average mass limitation of 85 ppd, and compliance with a removal efficiency of 85%;
- d. effluent flow – 30 day average limitation of 127,000 gpd and a daily maximum flow of 197,000 gpd; and
- e. pH – 7 day average concentration limitation of 6.0 standard units and a daily maximum concentration limitation of 9.0 standard units.

20. The EPA inspection and a review of information provided by the City in response to EPA’s Information Request revealed that the City has exceeded 2001 NPDES permit concentration and mass limitations for ammonia, concentration and mass limitations for cBOD<sub>5</sub>, the monthly mass limitation for TSS, the effluent flow limitations, and the pH limitations, and failed to meet the removal efficiencies for cBOD<sub>5</sub> and TSS, including the following:

a. ammonia

- i. the City exceeded the 30 day average concentration NPDES permit limitations for ammonia during the months of February, March, and April 2007; February, March, and April 2008; February and March 2009; and February and March 2010;
- ii. the City exceeded the daily maximum concentration NPDES permit limitations for ammonia during the months of March 2007; March and April 2008; March 2009; and March 2010;
- iii. the City exceeded the 30 day average mass NPDES permit limitations for ammonia during the months of March and April 2007; February, March and April 2008; March 2009; and March and April 2010;
- iv. the City exceeded the daily maximum mass NPDES permit limitations for ammonia during the months of March and April 2007; March and April 2008; March 2009; and March and July 2010;

b. cBOD<sub>5</sub>

- i. the City exceeded the 7 day average concentration NPDES permit limitation for cBOD<sub>5</sub> during the month of September 2010;

- ii. the City exceeded the 30 day average mass NPDES permit limitation for cBODs during the months of August 2007, and April, May and June 2008;
  - iii. the City exceeded the 7 day average mass NPDES permit limitation for cBODs during the months of August 2007, and April, May, and June 2008;
- c. TSS
- i. the City exceeded the 30 day average mass NPDES permit limitation for TSS during the months of April 2007, and May and June 2008;
- d. removal efficiency
- i. the City did not meet the NPDES permit requirement for the removal efficiency of cBODs during the months of April 2008; May 2009; and April and May 2010;
  - ii. the City did not meet the NPDES permit requirement for the removal efficiency of TSS during the months of February and November 2007; April, May, and June 2008; March, May, June, July, November, and December 2009; and April, May, August, and September 2010;
- e. effluent flow
- i. the City exceeded the 30 day average NPDES permit limitation for flow during the months of March, April, May, June, August, September, and October 2007; March, April, May, and June 2008; May and November 2009; March, April, May, June, July, and August 2010;
  - ii. the City exceeded the daily maximum NPDES permit limitation for flow during the months of September 2006; March, April, May, June, July, August, September, and October 2007; March, April, May, and June 2008; May and November 2009; March, April, May, June, July, and August 2010; and
- f. pH
- i. the City exceeded the NPDES permit limitation for pH during the month of May 2008.

21. The City's failure to comply with the effluent limitations is a violation of the terms and conditions of its NPDES 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).

### **Order for Compliance**

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), Respondent is hereby ORDERED to take the actions described below:

22. *Compliance Plan.* Within 60 days of the effective date of the Order, the City shall submit to EPA, with a copy to IDNR, a comprehensive written plan for achieving compliance with the City's permitted effluent limitations at the wastewater treatment facility (the "Compliance Plan"). The Compliance Plan shall describe in detail the specific actions to be taken or work to be completed, and why such actions or work are sufficient to ensure compliance with the effluent limitations. The Compliance Plan shall include a detailed schedule for the proposed actions/work; all such actions/work shall be completed as soon as practicable, but no later than December 31, 2015. EPA will review and may provide comments on the City's Compliance Plan.

23. The City shall at all times comply with requirements established by the State of Iowa regarding the repair, construction, and operation of facilities associated with the City's POTW, including, but not limited to, any requirements for work to be performed by certified or professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable state requirements.

### **Submissions**

24. *Reporting to EPA and IDNR:* The City shall submit to EPA, with a copy to IDNR, quarterly reports describing the actions the City has taken each quarter to comply with the terms of this Order. These reports are due every January 28, April 28, July 28, and October 28 until termination of this Order pursuant to Paragraph 33 below; the first report is due July 28, 2011. The City's report shall include, at a minimum:

- a. Compliance Plan updates. Each quarterly report shall provide a detailed update regarding the City's implementation of its Compliance Plan, including a description of work completed and milestones met during the previous quarter; and
- b. Monthly Discharge Monitoring Reports. Each quarterly report shall include a copy of that quarter's Discharge Monitoring Reports.

25. All submissions by Respondent to 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 that the City of Fairbank has complied with all the applicable requirements of the Order for Compliance. I also 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.*

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

Robert Bryant  
Environmental Protection Specialist  
Water Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

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

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

### **General Provisions**

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

28. 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.

29. 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**

30. 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**

31. 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**

32. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

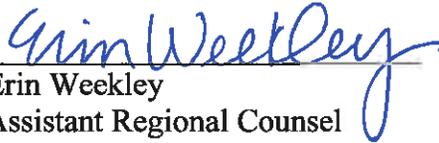
#### **Termination**

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.

Issued this 25 day of May, 2011.



Karen A. Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency – Region 7



Erin Weekley  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 7

**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:

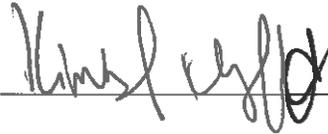
The Honorable Maurice Welsh  
Mayor, City of Fairbank  
116 East Main Street  
Fairbank, Iowa 50629-8626,

and by first class mail to:

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

**MAY 26 2011**

Date



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