

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

2015 AUG 17 PM 1:38

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
SHENANDOAH, IOWA (CITY OF)) Docket No. CWA-07-2015-0066
Respondent) COMPLAINT AND
Proceedings under Section 309(g) of the) CONSENT AGREEMENT/
Clean Water Act, 33 U.S.C. § 1319(g)) FINAL ORDER

)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 (“EPA”) and Respondent, the City of Shenandoah, Iowa, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent, the City of Shenandoah, Iowa, has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the “Complainant”).

5. Respondent, the City of Shenandoah, Iowa (“City” or “Respondent”), is and was at all relevant times a municipality charted under the laws of the state of Iowa.

Statutory and Regulatory Framework

6. 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, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

7. 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. To implement Section 402 of the CWA, EPA promulgated regulations thereunder, including 40 CFR 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. 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 implementing regulations, and a Memorandum of Understanding. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA’s General Allegations

9. The City of Shenandoah is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. 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.

11. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources. The POTW includes a wastewater collection system and a sewage treatment plant (“STP”), which includes two covered trickling filters and various clarifying and holding cells, located to the northwest of the City off Old Hwy 2 at 190th Street.

12. The City’s POTW discharges to the Johnson Run Drainage Ditch, then to the East Nishnabotna River, which are each “navigable waters” and “waters 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.

13. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

14. 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.

15. 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.

16. The IDNR issued NPDES Permit No. IA-0032328 (hereafter "Permit") to the City for discharges from its POTW. The Permit became effective September 10, 2002, with an expiration date of September 9, 2007. The IDNR has administratively continued the permit.

17. Respondent's Permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the Permit as "Outfall 001" for the discharges from a trickling filter wastewater treatment facility and as Outfall 002" for the discharge to a golf course pond used for irrigation, each subject to the effluent limitations and conditions set forth in the Permit.

18. Respondent's Permit sets effluent limitations at Outfall 001 for pollutants, including Five-day Carbonaceous Biological Oxygen Demand ("CBOD₅"), Total Suspended Solids ("TSS"), Ammonia Nitrogen, and pH, and requires once or twice weekly monitoring for these parameters.

19. Respondent's Permit sets effluent limitations at Outfall 002 requiring a minimum concentration level and contact time for Total Residual Chlorine, ensuring adequate disinfection before irrigation of the golf course.

20. On May 5 through 8, 2014, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of the City's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its Permit and the CWA.

21. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the Permit, including Monthly Operating Reports ("MORs") from January 2011 through March 2014, and observed the STP, collection system, contributing industrial users and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations regarding the City's POTW for the period from 2009 through the date of the EPA inspection included, but were not limited to:

- a. Discharges of effluent in violation of its Permit limitations on at least 41 occasions; and
- b. Characteristics of and circumstances at the POTW, including, a discharge from Green Plains Energy, a local industry, through Outfall 001 that was connected after the POTW's treatment facilities but before effluent sampling by the City; a collapsed cover on one of the STP's two Biosolids digesters that the City reported

occurred in 2009; and accumulation of lime sludges from the City's drinking water treatment plant in the primary clarifier, equalization basin and digesters leading to reduced treatment capacity.

22. At the conclusion of the Inspection, the EPA inspector provided the City a Notice of Potential NPDES Permit Violations (referred to as an "NOPV"), which described the inspector's preliminary observations regarding potential violations, including, but not limited to, effluent limit exceedances, sample collection and analysis deficiencies, and operation and maintenance deficiencies.

23. By letter dated May 15, 2014, the City provided additional information to the EPA inspector regarding the matters identified in the NOPV. The City's letter indicated the sampling and analysis deficiencies had been corrected and the City was considering options to correct other deficiencies.

24. By letter dated October 16, 2014, the EPA sent to the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

25. By letters dated November 21 and December 12, 2014, the City responded to EPA's Request for Information and provided documentation and responses to questions, including information related to monitoring results for the STP's influent and effluent. Additionally, the City informed EPA that it had begun construction of a new water treatment plant that would eliminate the discharge of lime sludge to the SWP, but that the City had encountered unanticipated delays due to circumstances beyond its control.

EPA's Specific Allegations

26. The facts stated in Paragraphs 9 through 25, above, are herein incorporated.

27. Based on observations documented during the EPA inspection, review of information provided by the City in response to the EPA's NOPV and Request for Information, and review of other information reportable by the City pursuant to its Permits, the EPA finds that the Respondent has violated the terms and conditions of its Permit, including, but not limited to, the following.

- a. *CBOD₅*: discharging effluent during the 35 months between August 2011 and August 2014 exceeding the weekly average concentration limits six times, the monthly average concentration limits four times, and the weekly and monthly average mass limits one time each;
- b. *TSS*: discharging effluent during the 35 months between August 2011 and August 2014 exceeding the weekly average concentration limits six times, and the monthly average concentration limits nine times;

- c. *Ammonia*: discharging effluent during the 35 months between August 2011 and August 2014 exceeding the monthly average concentration limits seven times, and the daily maximum concentration limits five times; and
 - d. *TRC*: irrigating effluent during the 35 months between August 2011 and August 2014 failing to meet the minimum TRC concentration on two occasions as required by the Permit.
28. The EPA finds that each of Respondent's violations described in Paragraphs 30, above, is a violation of the terms and conditions of its Permit issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

29. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$37,500.

CONSENT AGREEMENT

30. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.
31. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.
32. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.
33. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.
34. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
35. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.
36. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

37. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with Administrative Order for Compliance on Consent, EPA Docket No. CWA-07-2015-0045, to achieve compliance with all requirements of its NPDES Permit and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

Penalty Payment

38. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Fifteen Thousand Dollars (\$15,000)** pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

39. The payment of penalties must reference docket number "CWA-07-2015-0066" and be remitted using one of the payment methods specified in Appendix A to this Order.

40. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

41. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

42. Respondent understands that, pursuant to 40 C.F.R. § 13.18, its failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

43. Respondent's payment of the entire city penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

44. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 37 of this Consent Agreement/Final Order.

45. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

46. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

47. With respect to matters not addressed in this Consent Agreement/Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

48. This Consent Agreement/Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. All time periods herein shall be calculated therefrom unless otherwise provided in this Consent Agreement/Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

49. The executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

50. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

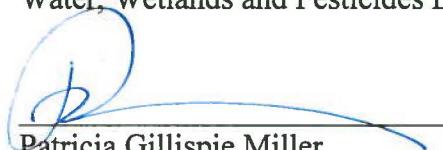
51. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

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

Issued this 10th day of August, 2015.

Karen A. Flournoy

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

For the City of Shenandoah, Iowa:

Richard N Hunt
Signature

June 15, 2015
Date

Richard N. Hunt
Name

Mayor
Title

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

IT IS SO ORDERED.

8-17-15
Date

Karina Boromeo
Karina Boromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by ~~certified mail, return receipt requested~~, to:

8/17/15 First Class Mail

The Honorable Richard N. Hunt
Mayor, Shenandoah
500 W. Clarinda Avenue
Shenandoah, Iowa 51601

and by first class mail to:

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

8/17/15
Date

Kathy Robinson
Signature