

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
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:)
)
THE CITY OF CHARITON, IOWA)
)
Respondent)
)
Proceedings under)
Section 309(g) of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

DOCKET NO. CWA-07-2010-0056

COMPLAINT AND
CONSENT AGREEMENT/
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 United States Environmental Protection Agency's (EPA's) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

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

4. Respondent is the City of Chariton, Iowa, a municipality organized under the laws of the state of Iowa and authorized to conduct business in the state of Iowa.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, 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.

7. 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. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

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

9. The City owns and operates a Publicly Owned Treatment Works (POTW), as defined by 40 CFR § 403.3(q), that receives and treats wastewater from various domestic and commercial sources.

10. The City’s POTW discharges to Little Whitebreast Creek.

11. The POTW is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

Factual Background

13. On or about September 17, 2001, IDNR granted NPDES permit number IA-5903001 (hereafter “NPDES permit”), to the Respondent for discharges from the POTW to Little Whitebreast Creek subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit was modified on September 20, 2001, and has an expiration date of September 16, 2006. The NPDES permit has been administratively extended by IDNR.

14. Effluent Limitations section on page 2 of Respondent’s NPDES permit sets a final effluent limitation from its wastewater treatment plant (“WWTP”) at Outfall 001 for Ammonia Nitrogen (“NH₃”) for the month of December of 3.2000 milligrams per liter (“mg/L”) 30 day average and 5.7000 mg/L daily maximum.

15. Effluent Limitations section on pages 2 and 3 of Respondent's NPDES permit also sets monitoring requirements for Outfalls 002 and 003 for five-day carbonaceous biochemical oxygen demand ("CBOD₅"), total suspended solids ("TSS") and pH.

16. Monitoring and Reporting Requirements on page 4 of Respondent's NPDES permit require the permittee to utilize analytical and sampling methods as specified in 40 C.F.R. Part 136, or other methods approved in writing by the IDNR.

17. The Design Capacity – Standard Conditions on page 6 of Respondent's NPDES permit identifies design capacities for Outfall 001 as 0.607 million gallons per day ("MGD") for average dry weather ("ADW"), 1.115 MGD for average wet weather ("AWW") and 2.230 MGD for maximum wet weather ("MWW"). This provision also states that wastes in volumes or quantities in excess of the design capacity are prohibited.

18. Item 8 of the Standard Conditions of the Respondent's NPDES permit states, "[a]ll facilities and control systems shall be operated as efficiently as possible and maintained in good working order." (See, 567.64.7(5)(f) Iowa Administrative Code ("IAC") and 40 CFR § 122.41(e).)

19. Item 10 of the Standards Conditions of the Respondent's NPDES permit requires the City to maintain records of operations in accordance with 567-63.2 IAC, including the time of sample collection and method of analyst for pH. (See also, 40 CFR § 122.41(j)(3).)

20. Item 14 of the Standard Conditions of the Respondent's NPDES permit requires that any non-compliance that may endanger human health or environment shall be reported orally within 24 hours of discovery followed by a written submittal describing the non-compliance and its cause, the period of non-compliance including exact dates and times, whether the cause has been corrected, how long the bypass is expected to continue and steps taken to reduce, eliminate and prevent a reoccurrence.

21. The Sludge Handling and Disposal Requirements attachment to Respondent's NPDES permit requires that land application of municipal sewage sludge (hereafter "biosolids") shall be conducted in accordance with criteria established IAC 567-67.1 through 67.11(455B) and pursuant to Section 405(d) of the CWA, 33 U.S.C. § 1345(d), and regulations promulgated at 40 CFR Part 503. The NPDES permit requires the permittee to provide written notice to the IDNR prior to any planned changes in biosolids disposal practices, and the cited IAC provisions require the permittee to have a long-range program for land application of biosolids, with a minimum planning period of 5 years, updated annually.

22. On September 26 through 28, 2007, the EPA performed an 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 NPDES permit and the CWA.

23. On October 9 and December 12, 2007, a representative of the IDNR performed inspections at the City's POTW. The findings from those inspections were included in an IDNR Report of Investigation dated February 25, 2008, and provided to the City in a cover letter and Notice of Violation ("NOV") dated February 25, 2008.

24. On March 10, 2008, EPA received a response from the City to a request for information (hereafter "EPA Information Request") issued by EPA to the City on January 31, 2008, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

Findings of Violation

25. Based on observations documented during the EPA Inspection, review of the IDNR Investigation Report and NOV, and review of information provided by the City in response to the EPA Information Request, the EPA finds that the City violated the terms and conditions of its NPDES, including, but not limited to, the following:

- a. Respondent violated the Effluent Limitations of its NPDES permit by failing to meet the Ammonia daily maximum concentration limit for the sample collected on March 19, 2008; by failing to meet the Ammonia daily maximum mass limit for samples collected on August 8, 2007 and March 19, 2008; and by failing to meet the pH daily maximum limit for samples collected on October 7, 2008 and December 22, 2009.
- b. Respondent violated the Monitoring and Reporting Requirements of its NPDES permit by failing to:
 - i. document all required sample information and the analytical technique or method used to test pH; and
 - ii. maintain sample temperatures of $\geq 4^{\circ}\text{C}$ during and following sample collection.
- c. Respondent violated Design Capacity Standard Conditions and Item 8 of the Standard Conditions of its NPDES permit regarding proper capacity loadings, and operation and maintenance of the treatment facilities and control systems by:
 - i. exceeding the AWW and MWW design influent capacity of the wastewater treatment plant;
 - ii. maintaining the wastewater plant, particularly the final clarifier and mechanical bar screens, in poor condition;
 - iii. operating the WWTP outside normal operating procedures and accepted engineering and operating standards, specifically by failing to properly sample mixed liquor suspended solids ("MLSS") at correct intervals and by utilizing only one of the two aeration ditches during period when the hydraulic and organic loading exceeded the design capacity of a single aeration ditch;

- iv. turning off the blowers in one or both of the aeration ditches during high flow events in order to minimize loss of solids without initiating long term corrective measure to reduce the impacts of the high flow events on the treatment plant; and
- v. failing to address significant inflow and infiltration ("I&I") in the collection system that has caused hydraulic overloading of the WWTP, bypasses at the WWTP and unpermitted discharges within the collection system.

26. Respondent's violations of the terms and conditions of its NPDES permit, as described in Paragraph 25, above, are violations of Sections 301(a) and a permit issued pursuant to 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

27. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in paragraph 36 below.

CONSENT AGREEMENT

28. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

29. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

30. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

31. Respondent waives any right to contest the allegations and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

32. Respondent and Complainant each agree to resolve 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.

33. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

34. Respondent certifies by signing this Consent Agreement/Final Order that Respondent is presently in compliance with all requirements of the CWA, its NPDES Permit, or to the extent such compliance is not yet fully achieved, with the terms of the Administrative Order for Compliance issued by EPA on August 4, 2008, EPA Docket No. CWA-07-2008-0069.

35. Nothing contained in this Compliance with this Consent Agreement/Final Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

36. Respondent agrees to pay a mitigated civil penalty of Twenty Thousand Dollars (\$20,000), plus accrued interest on the outstanding balance, according to the payment schedule set forth below:

- a. Five Thousand Dollars (\$5,000) within thirty (30) days of receipt of a copy of this fully executed Consent Agreement and Final Order;
- b. Five Thousand Fifty Dollars and Eight Cents (\$5,050.08) on or before August 31, 2011;
- c. Five Thousand Fifty Dollars and Eight Cents (\$5,050.08) on or before February 29, 2012; and
- d. Five Thousand Fifty Dollars and Eight Cents (\$5,050.08) on or before August 31, 2012.

37. Respondent, at its discretion, may accelerate payment of the penalty.

38. The effect of settlement described in paragraph 33 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in paragraphs 34.

39. The penalty payment made by Respondent pursuant to this Complaint and Consent Agreement/Final Order is payment of a civil penalty and shall not be deductible for purposes of federal taxes.

40. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty Thousand Dollars (\$20,000), plus accrued interest. Payment of the penalty shall be made in amounts no less than, and by dates no later than, the amounts and dates identified in the schedule set forth in Paragraph 36, above. Each such payment shall identify the Respondent by name and docket number and shall be by certified or cashiers check made payable to "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Copies of the check shall be mailed to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

and

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

2. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the 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 and interest thereon.

3. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

4. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

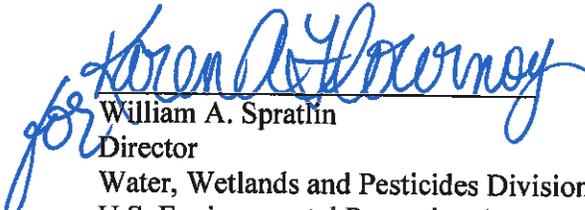
5. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

6. This Final 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 Final Order.

7. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

2-16-2011
Date



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII



Patricia Gillispie Miller
Senior Counsel
Region VII

FOR RESPONDENT:
CITY OF CHARITON, IOWA

01/03/2011
Date

Roger Manser
Signature

Name: Roger Manser

Title: Mayer

IT IS SO ORDERED.

March 14, 2011
Date

Robert L. Patrick
Robert L. Patrick
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, 901 North Fifth Street, Kansas City, Kansas 66101. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

The Honorable Roger Manser, Mayor
City of Chariton
115 South Main Street
Chariton, IA 50049

Dennis Ostwinkle, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

James Stricker, Supervisor
IDNR Field Office #5
401 SW 7th, Suite 1
Des Moines, IA 50309

Dated this 16th day of March, 2011.

Kathy Robinson
Name