

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

IN THE MATTER OF)
) Docket No. CWA-07-2009-0018
)
THE CITY OF SPENCER, IOWA)
)
Respondent) AMENDED ORDER FOR
) COMPLIANCE ON CONSENT
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a))
_____)

INTRODUCTION

1. This amendment to the above captioned ORDER FOR COMPLIANCE ON CONSENT ("Order") 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).
2. The Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA, Region 7, and by further delegation from the Regional Administrator, EPA, Region 7, is the Director of Region 7's Water, Wetlands and Pesticides Division, EPA, Region 7.
3. Respondent, City of Spencer, Iowa, owns and/or operates a Publicly Owned Treatment Works ("POTW") in the State of Iowa that treats domestic, commercial, and industrial wastewater. 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.
4. On January 26, 2009, the Findings of Violation and Administrative Order for Compliance on Consent in this matter was issued pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to resolve violations cited therein. As required by paragraphs 23 through 26 of the original Order, the City submitted, and the EPA approved, a Project Plan and Implementation Schedule to separate its sanitary and storm water systems and eliminate combined sewer overflows ("CSOs"), and to the extent feasible, sanitary sewer overflows ("SSOs").

5. As required by paragraphs 29 through 32 of the original Order, the City submitted progress reports to the EPA and the Iowa Department of Natural Resources ("IDNR"), and, upon request, provided additional information to the EPA regarding the status and extent of work performed on the City's CSOs and SSOs, and the resulting improvements.

6. Based upon representations by the City and after consultation with the IDNR, the EPA has determined that the City's implementation of its Project Plan and Implementation Schedule to date may have achieved 85% or greater capture of wet weather flow for treatment over the past few years that may qualify as compliance with the presumptive approach for compliance with the Combined Sewer Overflow Policy. However, the City's March 2008 Combined Sewer Overflow Plan of Action, prepared prior to issuance of the original Order, indicated that Spencer would completely separate its combined sewer system, not capture greater than 85% of wet weather flow from its combined system.

7. After consultation with the IDNR, the Parties to the Order have determined that it is appropriate for the City to revise and resubmit its LTCP for approval and, upon its approval, implement the revised LTCP. Therefore, the Parties agree to the terms of this Amended Order in accordance with paragraph 38 of the Order.

8. Each signatory to this Amended Order certifies that he or she is fully authorized to enter into the terms and conditions of this Amended Order.

AMENDED ORDER FOR COMPLIANCE ON CONSENT

9. Nothing contained in this Amended 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.

10. The following provisions of this Amended Order shall be implemented in lieu of Paragraphs 23 through 28 of the original Order issued January 26, 2009. All other provisions of the original Order, unless specifically addressed by this Amended Order, shall remain the same.

- a. *LTCP Plan Submission.* The City shall review and revise its LTCP consistent with the requirements of the CSO Policy, 59 Fed. Reg. 18688 (Apr. 19, 1994), Section 402(q) of the CWA, 33 U.S.C. § 1342(q), and submit it for approval to the IDNR Water Quality Bureau, NPDES and Wastewater Operations Program, with a copy to the EPA, by no later than November 30, 2017; and
- b. *LTCP Implementation.* Upon approval by the IDNR, the Respondent shall implement the provisions of the revised LTCP.

Annual Progress Reports

11. As required by paragraph 29 of the original Order, beginning on August 31, 2018, and by August 31 of each year thereafter, Respondent shall submit progress reports to the EPA and the IDNR, summarizing the projects completed pursuant to this Order.

- a. The annual progress reports shall be submitted until this Order is terminated and shall describe the work performed during the previous twelve-month period and include a projection of the work to be performed during the next twelve-month period.
- b. In addition, Respondent shall establish procedures to detect and measure SSOs, to the extent practicable, and shall include in its annual progress reports a list of SSOs that occur during the reporting period, including at a minimum, the date, time, location, cause, and actions taken to resolve each SSO. The duration and total volume of each SSO, if reasonably determinable, shall also be reported.
- c. Respondent may include in its annual report a request for the EPA to terminate this Order pursuant to Paragraph 22. In its request to terminate the Order, the Respondent should provide sufficient information and evidence to enable the EPA to make a determination that the Respondent is successfully implementing the revised LTCP.

Submissions

12. All documents required to be submitted to EPA by this Amended Order, shall be submitted electronically to:

Wayne Dillard, Compliance Officer
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
11201 Renner Blvd
Lenexa, KS 66219

Dillard.Wayne@epa.gov

13. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

14. A copy of documents required to be submitted to EPA by this Amended Order, shall be submitted by mail to:

Tom Roos
Iowa Department of Natural Resources
Field Office #3
1900 N. Grand, Suite E17
Spencer, IA 51301.

15. *Certification.* Each submittal required by this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, as defined at 40 C.F.R. § 122.22, that contains the following certification:

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.

GENERAL PROVISIONS

Effect of Compliance with the Terms of this Amended Order for Compliance on Consent

16. Compliance with the terms of the Order, as amended herein, shall not relieve the City 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.

17. The Order, as amended herein, does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. §1215 *et. seq.*, all of which remains in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. §1319, for any violation cited in the Order. Issuance of this Amended Order for Compliance on Consent shall not be deemed an election by the 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

18. Nothing in this Amended 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

19. If any provision or authority of this Amended Order, or the application of this Amended Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Amended Order shall remain in full force and effect and shall not be affected by such a holding.

Titles and Headings

20. The titles, headings and subheadings within this Amended Order are for informational purposes only for the convenience of the reader. As such, any inconsistencies between the title, headings and subheadings and the text of the Amended Order shall be resolved in favor of the text.

Effective Date

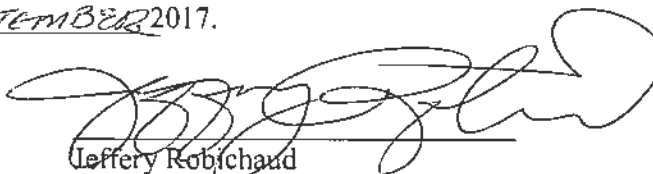
21. This Amended Order shall be effective upon receipt by the City of a fully executed copy thereof. All time periods herein shall be calculated from the Effective Date unless otherwise provided in this Amended Order.

Termination

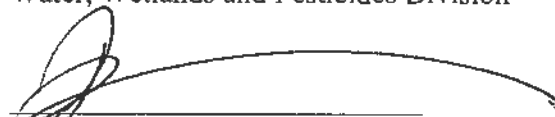
22. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

FOR COMPLAINANT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Issued this 6TH day of SEPTEMBER 2017.



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

FOR RESPONDENT, THE CITY OF SPENCER, IOWA:


Signature:

8-21-2017
Date

Reynold Peterson
Name:

Mayor
Title:



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 Order for Compliance on Consent 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 Findings of Violation and Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Reynold Peterson
Mayor
City of Spencer
418 2nd Avenue West
Spencer, IA 51301

And by first class mail to:

Mark White
Public Works Director
City of Spencer
418 2nd Avenue West
Spencer, IA 51301

Ted Petersen
Iowa Department of Natural Resources
Field Office #5
7900 Hickman Rd, Suite 200
Windsor Heights, IA 50324

Name: 

Date: 9/2/17