

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

IN THE MATTER OF )  
EPWORTH, IOWA )  
 )  
A Municipality )  
 )  
Proceeding under Section 309(a)(3) )  
Of the Clean Water Act, )  
33 U.S.C. §1319(a)(3) )  
 )

FINDINGS OF VIOLATION AND  
ORDER FOR COMPLIANCE

Docket No. CWA-07-2010-0117

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and 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" or the "Act"), 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. The City of Epworth, Iowa (hereafter "Respondent" or "City") owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater.

3. The Iowa Department of Natural Resources ("IDNR") is the agency within the state of Iowa that has been authorized to administer the federal National Pollutant Discharge Elimination System ("NPDES") program pursuant to Section 402 of the CWA and its implementing regulations. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

**II. Jurisdiction and Findings of Violation**

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, permits issued under the authority of 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.

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

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

7. 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.

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

9. On April 9, 2001, IDNR issued to the City NPDES Permit No. IA-0036463 (hereafter "NPDES permit") for discharges from its POTW to an unnamed tributary to Whitewater Creek. The NPDES permit expired on April 8, 2006. On October 14, 2005, The City timely applied for a renewal permit. IDNR has extended the City's April 9, 2001 permit pending the results of a water quality determination on the unnamed tributary to Whitewater Creek.

10. The City's NPDES permit establishes effluent limitations for Ammonia Nitrogen (N) ("NH<sub>3</sub>-N") and Carbonaceous Biochemical Oxygen Demand ("CBOD") for Outfall 001.

11. The City's NPDES permit requires Respondent to sample settleable solids at Outfall 001 twice a week and report the sample results in the City's Discharge Monitoring Reports ("DMRs") to IDNR.

12. The City's NPDES permit requires Respondent to utilize sampling methods and procedures specified in 40 C.F.R. Part 136, including the regular calibration of pH and Dissolved Oxygen ("D.O.") meters and to preserve samples at specified temperatures.

13. The City's NPDES permit requires Respondent to maintain records of all information resulting from any monitoring activities required in its permit for a minimum of three years.

14. On November 19, 2009, an EPA representative performed an inspection of Respondent's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the inspection was observation of the City's POTW. The inspection revealed the following:

a. The City's Public Works Director acknowledged that the City failed to sample and report settleable solids, as required by its NPDES permit.

b. The City's Public Works Director acknowledged that the City failed to calibrate pH and D.O. meters and failed to maintain calibration records, as required by its NPDES permit.

c. Records collected from the City's contract laboratory showed that, between June 2009 and October 2009, the City failed to preserve samples of CBOD, Total Suspended Solids ("TSS") and NH<sub>3</sub>-N at the proper temperatures, as required by its NPDES permit.

d. Within the past five years, the City has exceeded its monthly average NPDES permit limitations for TSS, BOD and pH, as follows:

**Table 1: CBOD Monthly Violations**

Date of Violation	Effluent Limit	Reported Effluent
March 2007	25 mg/L	27.4 mg/L
March 2008	25 mg/L	48 mg/L
April 2008	25 mg/L	28.2 mg/L
January 2009	25 mg/L	28.5 mg/L
February 2009	25 mg/L	39.2 mg/L

**Table 2: Ammonia Violations**

Date of Violation	Effluent Limit	Reported Effluent
March 2006	17 mg/L	25.6 mg/L
April 2006	17 mg/L	25.3 mg/L
May 2006	17 mg/L	25.7 mg/L
March 2007	17 mg/L	24.4 mg/L
April 2007	17 mg/L	22.4 mg/L
March 2008	17 mg/L	23.3 mg/L
December 2008	17 mg/L	19.6 mg/L
January 2009	31 mg/L	32.6 mg/L
March 2009	17 mg/L	22.2 mg/L

15. The violations identified in paragraph 14 are violations of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the City, and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **III. Order For Compliance**

16. Based on the Findings set forth above, and pursuant 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED as follows:

17. Within thirty (30) days of receipt of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permit.

18. Within thirty (30) days of receipt of this Order, the Respondent shall submit a written report to EPA and a copy to IDNR detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations. Respondent's report shall include documentation that Respondent's sampling, monitoring and reporting is being performed in accordance with Respondent's NPDES permit

19. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of receipt of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

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

Kimberly Willis  
Water Enforcement Branch  
U.S. Environmental Protection Agency-Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

#### **Certification**

21. All submissions made by Respondent to EPA and MDNR pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

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 submissions of false information.

#### **IV. General Provisions**

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

22. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

23. 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 Section 309 of the CWA, 33 U.S.C. § 1319,

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**

24. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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**

25. 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.

#### **Parties Bound**

26. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

#### **Effective Date**

27. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

#### **Termination**

28. 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.

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Issued this 9th day of August, 2010.

*for* Karen A. Flourney  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Chris Muehlberger  
Chris Muehlberger  
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I sent a copy the foregoing Findings of Violation and Order by first class certified mail, return receipt requested, to:

The Honorable Jacob Reuter, Mayor  
City of Epworth, Iowa  
191 Jacoby Dr. E.  
P.O. Box 266  
Epworth, Iowa 52045

Dennis Ostwinkle  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52353-1623

8.10.10

Date