

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)
)
The City of Council Bluffs, Iowa) Docket No. CWA-07-2010-0022
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318(a) and 1319(a). This Authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the City of Council Bluffs, Iowa (“City”), a municipality chartered under the laws of the State of Iowa (“Iowa”). Respondent is the owner and or operator of the Municipal Separate Storm Sewer System (“MS4”), located within the corporate boundary of the City of Council Bluffs, Pottawattamie County, Iowa.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for various categories of stormwater discharges. Section 402(p)(2) requires permits for five categories of stormwater discharges. Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), requires permitting for additional categories of stormwater discharges based on the results of studies conducted pursuant to Section 402(p)(5) of the CWA, 33 U.S.C. § 1342(p)(5).

6. Pursuant to Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), EPA promulgated regulations ("Phase II storm water regulations") at 40 C.F.R. Part 122 setting forth the additional categories of stormwater discharges to be permitted and the requirements of the Phase II program.

7. 40 C.F.R. § 122.26(a)(9)(i)(A) states that on or after October 1, 1994, for discharges composed entirely of stormwater . . . operators shall be required to obtain a NPDES permit . . . if the discharge is from a small municipal separate storm sewer ("MS4") required to be regulated pursuant to 40 C.F.R. § 122.32.

8. 40 C.F.R. § 122.26(b)(8) defines "municipal separate storm sewer" as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains).

9. 40 C.F.R. § 122.26(b)(16) defines "small municipal separate storm sewer system," in part, as all separate storm sewers that are:

(i) owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body . . . having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes [. . .];

(ii) not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7), or designated under paragraph (a)(1)(v) of this section.

10. 40 C.F.R. § 122.32(a) provides that a small MS4 is regulated if:

(i) the small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census; or

(ii) the MS4 is designated by the NPDES permitting authority, including where the designation is pursuant to §§123.35(b)(3) and (b)(4), or is based upon a petition under §122.26(f).

11. The Iowa Department of Natural Resources ("IDNR") is the 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.

Factual Background

12. Respondent is a municipality chartered under the laws of Iowa, and as such, is a "person," as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

13. Respondent operates a stormwater drainage system consisting of, among other things, drain inlets, storm sewers, and outfalls, and as such is a "municipal separate storm sewer" as that term is defined in 40 C.F.R. § 122.26(b)(8).

14. At all times relevant to this Order, Respondent owned and/or operated a municipal separate storm sewer system, which does not meet the criteria to be a large or medium MS4, and thus is the owner and/or operator of a "small municipal separate storm sewer system," as defined by 40 C.F.R. § 122.26(b)(4)(i).

15. Respondent's small MS4 is located in the Omaha, Nebraska/Iowa "urbanized area" as defined by the 2000 Census, and therefore, at all times relevant to this Order, Respondent's small MS4 is subject to regulation.

16. Respondent's small MS4 is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. Respondent discharged pollutants into "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. Discharges from Respondent's small MS4 results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

19. Respondent's discharge from a small MS4, requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. § 122.32.

20. IDNR issued a Final Permit for discharges from the City's small municipal separate storm sewer system under the NPDES, Permit No. IA0078271. This Final Permit was issued on July 19, 2004, expired on July 18, 2009, and has been administratively extended.

IV. Finding of Violation

21. The facts stated in Paragraphs 12 through 20 above are herein incorporated.

22. Part III, "Reporting Requirements," of Respondent's Permit requires that the Respondent shall submit annual reports to IDNR no later than April 30 of each calendar year of the permit term.

23. To date, Respondent has never submitted an annual report to IDNR as required by the Respondent's Permit.

24. Respondent's failure to submit the required annual report is a violation of Respondent's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order For Compliance

25. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), Respondent is hereby ORDERED to take the actions described below.

26. No later than thirty (30) calendar days following the receipt of this Order, Respondent shall submit a complete annual report for calendar year 2008 to the addressees in Paragraphs 27 and 28 below. The report must include all of the information required by Part III of Respondent's Permit. A copy of the Permit is included for your convenience.

Submissions

27. All documents required to be submitted to EPA pursuant to Paragraph 26 of this Order shall be submitted by mail to:

Ms. Cynthia Sans
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

28. All documents required to be submitted to IDNR pursuant to Paragraph 26 of this Order shall be submitted by mail to:

Mr. Dan Stipe
Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022-2259.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

29. 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.

30. 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

31. 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

32. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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.

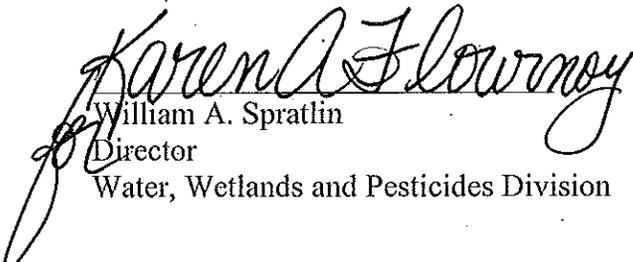
Effective Date

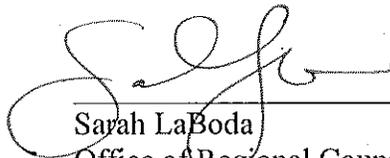
33. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.

Termination

34. 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 30th day of December, 2009.


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Sarah LaBoda
Office of Regional Counsel

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 Tom Hanafan
Mayor, City of Council Bluffs
209 Pearl Street
Council Bluffs, Iowa 51503

Mr. Greg Reeder
Director of Public Works
209 Pearl Street
Council Bluffs, Iowa 51503

And via first class mail to:

Mr. Dan Stipe
Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022-2259.

JAN 04 2010

Date

Signature

