

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
) Docket No. CWA-07-2016-0017
City of West Union, Iowa)
)
)
)
Respondent) ADMINISTRATIVE ORDER FOR
) COMPLIANCE ON CONSENT
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))

Preliminary Statement

1. This Administrative Order for Compliance on Consent ("Order") is issued by the U.S. Environmental Protection Agency ("EPA"), pursuant to the authority vested in the Administrator of the EPA by Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3), as amended. This authority has been delegated by the Administrator of the 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 West Union, Iowa ("City" or "Respondent"), a municipality chartered under the laws of the state of Iowa ("Iowa"). Respondent is the owner and/or operator of a Publicly Owned Treatment Works ("POTW"), as defined by 40 C.F.R. § 403.3(q), located in West Union, Iowa.

3. The EPA, together with the City enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent, through entering into this Order, to address noncompliance by the City in violation of its National Pollutant Discharge Elimination System ("NPDES") Permit. As set forth in this Order, the Parties have amicably reached agreement regarding the time frames for the City to attain compliance with the CWA and its NPDES Permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

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.

9. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

EPA's General Allegations and Findings of Fact

10. The City of West Union is a "person" for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. 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.

12. 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 trickling filters and various clarifying and holding cells, located at 9875 Echo Valley Road, West Union, Iowa.

13. The City's POTW discharges to Otter Creek which is a "navigable water" and "water 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.

14. 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).

15. 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.

16. The City's discharge of pollutants from its POTW into a "water of the United States" requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17. The IDNR issued NPDES Permit No. IA-0035378 ("2001 Permit") to the City for discharges from its POTW to Otter Creek. The Permit became effective September 27, 2001 with an expiration date of September 26, 2006. The Permit was administratively extended by IDNR pursuant to the Iowa Administrative Code, Chapter 567-64.8(455B). IDNR reissued the Permit on March 1, 2015 with an expiration date of February 29, 2020 ("Current Permit").

18. Respondent's 2001 Permit and Current Permit authorize Respondent to discharge pollutants only from specified point sources, including "Outfall 001" as identified in the Permit, for the discharges from a wastewater treatment facility subject to the effluent limitations and conditions set forth in the Permit.

19. Respondent's 2001 Permit and Current Permit require through Standard Conditions to properly operate and maintain all facilities and control systems.

20. Respondent's 2001 Permit and Current Permit set effluent limitations at Outfall 001 for identified pollutants, including Copper and Ammonia Nitrogen. Flow from the STP is also limited and is required to be monitored daily.

21. Respondent's 2001 Permit and Current Permit require samples and measurements taken to be representative of the volume and nature of the monitored wastewater. Additionally, analytical and sampling methods are required to be as specified in 40 C.F.R. § 136 or other methods approved in writing.

22. On May 11 through 14, 2015, an EPA representative performed a Compliance Sampling Inspection and Sanitary Sewer Overflow 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. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, collected and reviewed the City's records related to the Permit, including Monthly Operating Reports ("MORs"), and Sanitary Sewer Overflow ("SSO") Checklist, records related to self-monitoring, preventative maintenance and cleaning, and observed the POTW, including visually inspecting manholes and lift stations, the industrial users, and the receiving stream to which Outfall 001 discharges. Additionally, the inspector collected internal and contractor laboratory reports.

24. On or about January 7, 2016, EPA sent a Request for Information Pursuant to Section 308 of the CWA to the City requesting a copy of each Monthly Monitoring Report submitted to the IDNR for the period June 1, 2011 through November 30, 2015.

25. The EPA inspector's observations and review of the information provided by the City at the time of the inspection and Information Request regarding the City's POTW for the period from May 2011 through November 2015 revealed, at a minimum, the following violations:

- a. discharges in violation of its Permit effluent limitations on at least 60 occasions;
- b. discharges in violation of its Permit flow design limitations on at least 17 occasions;
- c. during the Inspection the facility was not conducting appropriate quality controls or utilizing proper test procedures on some of the internal laboratory analyses; and
- d. Respondent has reported discharges of untreated wastewater to waters of the United States from locations within Respondent's POTW (hereinafter Sanitary Sewer Overflows or "SSOs").

26. 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, SSOs, and operation and maintenance deficiencies.

27. By letter dated May 21, 2015, 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 in part had been corrected and the City was considering options to correct some of the other deficiencies.

ALLEGATION OF VIOLATION

28. The facts stated in Paragraphs 10 through 27 above are herein incorporated. Based on observations and information documented during the EPA inspection, review of information provided by the City in response to the EPA's NOPV, information provided by the Information Request, 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. *Ammonia*: discharging effluent between March 2013 and March 2015 exceeding the daily maximum concentration limits 29 times; daily maximum mass limits 17 times; monthly average concentration limits 6 times; and monthly average mass limits 4 times;
- b. *Copper*: discharging effluent between December 2011 and November 2015 exceeding the monthly average concentration limits twice and the daily maximum concentration limits 3 times;
- c. *Flow*: discharging effluent between May 2011 and July 2014 exceeding the average dry weather flow design limits 6 times; average wet weather flow design limits once; and maximum wet weather flow design limits 10 times; and
- d. *SSOs*: reported discharges of untreated wastewater to waters of the United States from locations within Respondent's POTW within the last five years. None of the locations where the discharges occurred are numbered outfalls authorized to discharge in Respondent's NPDES permit. Of these unauthorized discharges, at least one discharged untreated wastewater to Otter Creek. Otter Creek is a "navigable water" and "water of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation, 40 C.F.R. § 122.2.

30. The EPA finds that each of Respondent's violations described 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).

ORDER FOR COMPLIANCE

31. Based on the Findings of Fact and Findings of Violation set forth above, and, pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS, and the Respondent AGREES, to take the actions described below.

32. Immediately upon receipt of this Order, the City shall identify and implement all necessary actions to correct the violations cited above, and to comply with the conditions and limitations of its NPDES Permit.

33. *Compliance Plan*. Within three (3) months of receipt of this Order, the City shall submit to the EPA, with a copy to IDNR, a comprehensive written plan and proposed schedule for achieving compliance with the City's permitted effluent limitations of the NPDES Permit and to take all measures necessary with the goal of eliminating the SSOs (the "Compliance Plan"). The Compliance Plan shall describe in detail the specific actions and schedule for work to be completed. All such actions/work shall be completed as expeditiously as possible, but no later

than thirty-six (36) months from the effective date of this Order. The EPA will review the proposed schedule for proposed actions/work, and may provide comments on the City's proposed Compliance Plan.

34. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, the City shall submit a written certification to the EPA, with a copy to IDNR, that all City actions required by this order have been completed.

35. The City shall at all times comply with requirements established by the state of Iowa regarding the repair, construction, and operation of facilities associated with the City's POTW, including, but not limited to, any requirements for work to be performed by certified or licensed professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable state requirements.

Reporting

36. *Reporting to EPA and IDNR:* In addition to the submittals required above, the City shall submit to EPA, with a copy to IDNR, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every January 28 and July 28 until termination of this Order; the first report is due July 28, 2016. Each report shall include, at a minimum:

- a. a listing of Permit violations, if any, that occurred during the reporting period and a description of actions taken by the City to mitigate and minimize or prevent future recurrences of such violations;
- b. a detailed update on the progress of the work required by this Order, including a description of activities completed and milestones met during the reporting period, a description of actions scheduled for the next reporting period, and a statement regarding any challenges encountered and/or expected with respect to completion of the work required by this Order; and
- c. for submittal to the EPA only, a copy of that reporting period's Monthly Operating Reports ("MORs"). The City shall submit MORs to IDNR as required by its Permit.

37. All documents required to be submitted to EPA by this Order, shall, whenever possible, be submitted electronically to:

dillard.wayne@epa.gov

Documents that cannot be submitted electronically shall be submitted to:

Wayne Dillard, or his successor
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

A copy of all documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

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

General Provisions

Effect of Compliance with the terms of this Order

38. 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.

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

40. With respect to matters not addressed in this Order, the 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/or other legal remedies allowed by law.

41. Compliance with the terms of this Order shall not relieve Respondent 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.

Access and Requests for Information

42. 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

43. 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

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


Effective Date

45. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from this date unless otherwise provided in this Order.

Termination

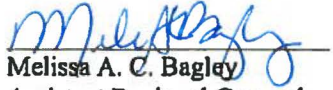
46. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

For Respondent, the City of West Union, Iowa:


The Honorable Kent Halverson
Mayor, City of West Union, Iowa

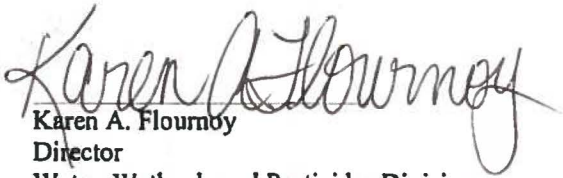
Date: 8-12-16

For the U.S. Environmental Protection Agency, Region 7:



Melissa A. C. Bagley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

Date: 8/16/16



Karen A. Flourney
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7

Date: 8-16-16

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order on Consent for Compliance to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order by certified mail, return receipt requested, to:

The Honorable Kent Halverson, Mayor
City of West Union
City Hall, P.O. Box 151
612 Highway 150 S.
West Union, Iowa 52175.

Date

9/19/2016

