

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
) Docket No. CWA-07-2016-0009
City of Waukon, 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 Sections 308 and 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 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 Waukon, 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 Waukon, Allamakee County, 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 Waukon 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 in the southeast section of the City off Highway 76.

13. The City's POTW discharges to an unnamed tributary to Paint Creek which flows into Paint Creek, which are each "navigable waters" and "waters 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 requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17. The IDNR issued NPDES Permit No. IA-0033081 (hereafter "Permit") to the City for discharges from its POTW. The Permit became effective November 6, 1999, with an expiration date of November 5, 2004. The IDNR has administratively continued the permit.

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

19. Respondent's Permit sets effluent limitations at Outfall 001 for pollutants, including Five-day Carbonaceous Biological Oxygen Demand ("CBOD₅"), Total Suspended Solids ("TSS"), Ammonia Nitrogen, pH, and copper and requires once or twice weekly monitoring for these parameters. Flow from the Waste Water Treatment Plant ("WWTP") is also limited and is required to be monitored daily.

20. On October 20 through 24, 2014, an EPA representative performed a Compliance Sampling 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 Permit and the CWA.

21. On or about June 18, 2015, EPA sent the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. On or about July 17, 2015, the City submitted responses to the Request for Information.

22. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the Permit, including Monthly Operating Reports ("MORs") from January 2012 through September 2014, and observed the Sewage Treatment Plant ("STP") collection system, contributing industrial users and the receiving stream to which Outfall 001 discharges. Additionally, the City submitted to EPA copies of MORs from the time of the inspection through May 2015. The EPA inspector's observations and review of

the City's response to the Request for Information regarding the City's POTW for the period from March 2011 through May 2015 included, but were not limited to:

- a. Discharges of effluent in violation of its Permit limitations on at least 58 occasions;
- b. During the inspection, an unsightly discharge to the receiving stream was observed;
- c. During the inspection the facility was not conducting appropriate quality controls or utilizing proper test procedures on some of the internal laboratory analyses;
- d. The pathogen reduction requirements were not met on the sewage sludge prior to land application. The City is required to manage and dispose of sewage sludge in accordance with 40 CFR, Part 503; and
- e. The City did not meet the required percent removal for CBOD and TSS on at least 9 occasions.

23. 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, and operation and maintenance deficiencies.

24. By letter dated November 3, 2014, 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

25. The facts stated in Paragraphs 10 through 24 above are herein incorporated.

26. Based on observations documented during the EPA inspection, review of information provided by the City in response to the Request for Information, review of information provided by the City in response to the EPA's NOPV 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. *CBOD₅*: discharging effluent between March 2011 and May 2015 exceeding the weekly average concentration limits twelve times, the monthly average concentration limits nine times, and the weekly average mass limits three times;
- b. *TSS*: discharging effluent between March 2011 and May 2015 exceeding the weekly average concentration limits two times, the monthly average concentration limits two times, the weekly average mass limits two times, and the monthly average mass limits two times;

- c. *Ammonia*: discharging between March 2011 and May 2015 exceeding the daily maximum concentration limits two times;
- d. *Copper*: discharging effluent between March 2011 and May 2015 exceeding the monthly average concentration limits nine times, the daily maximum concentration limits seven times, the monthly average mass limits two times, and the daily maximum mass limits three times; and
- e. *Flow*: discharging effluent between March 2011 and May 2015 exceeding the daily maximum limits three times.

27. 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

28. 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), Respondent is hereby ORDERED as follows:

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

29. *Compliance Plan*. Within twelve (12) 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 (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 forty-eight (48) months from the effective date of this Order. The EPA will review and approve the proposed schedule for proposed actions/work, and may provide comments on the City's proposed Compliance Plan.

30. *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.

31. 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

32. *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 January 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.

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

bruno.jodi@epa.gov

Documents that cannot be submitted electronically shall be submitted to:

Jodi Bruno, or her successor
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

34. 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

35. 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.

36. 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.

37. 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.

38. 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

39. 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

40. 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

41. 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.

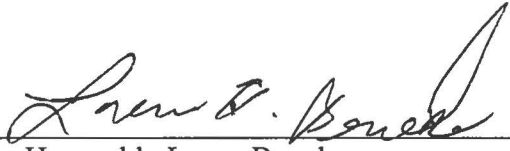
Effective Date

42. 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

43. 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.

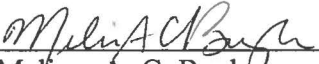
For Respondent, the City of Waukon, Iowa:

A handwritten signature in cursive script, reading "Loren Beneke", written over a horizontal line.

The Honorable Loren Beneke
Mayor, City of Waukon, Iowa

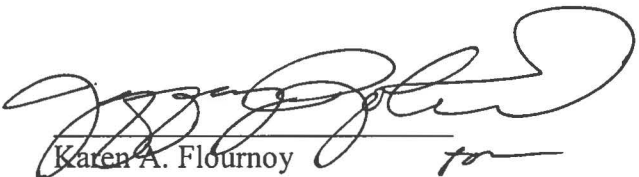
Date: 12.30.15

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: 1/12/16



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

Date: 1/13/16