

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)

) Docket No. CWA-07-2011-0051

THE CITY OF DENVER, IOWA,)

) FINDINGS OF VIOLATION and
) ORDER FOR COMPLIANCE

Respondent,)

Proceedings under Section 309(a)(3)
of the Clean Water Act,
33 U.S.C. § 1319(a)

Preliminary Statement

1. The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE 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), 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. Respondent, the City of Denver, Iowa (hereafter "Respondent" or "City"), operates a Publicly Owned Treatment Works ("POTW") in the State of Iowa that treats domestic wastewater.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, 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 National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

4. The CWA 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.

5. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. 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.

6. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, device and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

7. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System (“NPDES”) program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

Findings of Fact

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

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

10. The City’s POTW discharges to Quarter Section Run, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

11. 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.

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

13. IDNR granted NPDES Permit No. IA-0044156 to Respondent for discharges from its POTW to Quarter Section Run. The permit (hereafter “1998 NPDES permit”) became effective April 1, 1998, and expired April 1, 2003. The 1998 NPDES permit has been administratively extended by IDNR.

14. The 1998 NPDES permit states that the City's wastewater treatment facility, which discharges through Outfall 001, has a design flow of 564,000 gallons per day ("gpd") and experienced an average flow of 378,000 gpd in 2008 and 315,000 gpd in 2009.

15. On September 21 through 24, 2009, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of the City's wastewater treatment facility 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.

16. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the 1998 NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations included, but were not limited to:

- a. numerous instances of noncompliance with the effluent limitations contained in the 1998 NPDES permit, including noncompliance identified through analysis of samples collected during the EPA inspection;
- b. identification by the City of significant inflow and infiltration ("I&I"), and related sanitary sewer overflows ("SSOs"); and
- c. observation that the receiving stream for Outfall 001, Quarter Section Run, was green in color, apparently due to the high amount of algae discharged from the POTW's lagoon.

17. On May 3, 2010, EPA received a response from the City to a request for information (hereafter "EPA Information Request") issued by EPA to the City on March 29, 2010, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

Findings of Violation

18. The facts stated in Paragraphs 8 through 17, above, are herein incorporated.

Count I

19. The Effluent Limitations section of the City's 1998 NPDES permit established limitations for Outfall 001, discharge from the wastewater treatment facility, including the following:

- a. ammonia – 30 day average limitations varying, depending on the month, between 6.1 milligrams per Liter (mg/L) and 14.0 mg/L, and daily maximum limitations between 10.0 mg/L and 23.0 mg/L;

- b. total suspended solids (“TSS”) – weekly average limitation of 120.0 mg/L, 30 day average limitation of 80.0 mg/L, and compliance with a removal efficiency of 85%;
- c. 5-day carbonaceous biochemical oxygen demand (“cBOD₅”) – monitoring at least once per month with weekly average limitations of 45 mg/L, monthly average limitations of 30 mg/L, and compliance with a removal efficiency of 85%; and
- d. effluent flow – 30 day average limitation of 376,000 gallons per day and a daily maximum of 564,000 gallons per day.

20. The EPA inspection and a review of information provided by the City in response to EPA’s Information Request revealed that the City has exceeded its 1998 NPDES permit concentration and mass limitations for ammonia, TSS, and cBOD₅, has exceeded the limitations for effluent flow, and has failed to meet the removal efficiencies for TSS and cBOD₅, including the following:

- a. ammonia
 - i. the City exceeded the 30 day average concentration NPDES permit limitations for ammonia during the months of February, March, April, and December 2007; February, March, April, October, November, and December 2008; and January, February, March, and April 2009;
 - ii. the City exceeded the daily maximum concentration NPDES permit limitations for ammonia during the months of March, April, and December 2007; March, April, September, October, November, and December 2008; and February and March 2009;
 - iii. the City exceeded the 30 day average mass NPDES permit limitations for ammonia during the months of March and April 2007; March and April 2008; and February and March 2009;
 - iv. the City exceeded the daily maximum mass NPDES permit limitations for ammonia during the months of March and April 2007; March and April 2008; and February and March 2009;
- b. TSS
 - i. the City exceeded the 30 day average concentration NPDES permit limitation for TSS during the month of July 2009;

- ii. the City exceeded the seven day average concentration NPDES permit limitation for TSS during the month of July 2009;
 - iii. the City exceeded the seven day average mass NPDES permit limitation for TSS during the month of May 2008;
- c. cBODs
- i. the City exceeded the 30 day average concentration NPDES permit limitation for cBODs during the months of February , March, and July 2007; February, March, and October 2008; and January, February, and March 2009;
 - ii. the City exceeded the seven day average concentration NPDES permit limitation for cBODs during the months of February and March 2008, and January, February, and March 2009;
 - iii. the City exceeded the 30 day average mass NPDES permit limitation for cBODs during the months of March and April 2007; March, April, May, and June 2008; and February and March 2009;
 - iv. the City exceeded the seven day average mass NPDES permit limitation for cBODs during the months of March and April 2007; March, April, May, and June 2008; and February and March 2009;
- d. removal efficiency
- i. the City did not meet the NPDES permit requirement for the removal efficiency of TSS during the months of May, June, July, August, September, November, and December 2006; January, February, March, April, May, July, and August 2007; and August and October 2009;
 - ii. the City did not meet the NPDES permit requirement for the removal efficiency of cBODs during the months of May, June, July, August, and September 2006; January, February, March, April, May, June, July, September and November 2007; February, May, and June 2008; February and October 2009; and March 2010;
- e. effluent flow
- i. the City exceeded the daily maximum NPDES permit limitation for flow during the months of September 2006; March, April, May, and August

2007; March, May, June, and July 2008; March, April, May, July, August, October, and December 2009; and March 2010; and

- ii. the City exceeded the 30 day average NPDES permit limitation for flow during the months of March, April, May and August 2007; March, May, June, and July 2008; April, May, and October 2009; and March 2010.

21. The City's failure to comply with the effluent limitations is a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count II

22. Condition #8 of the Standard Conditions section of the City's 1998 NPDES permit, titled "Proper Operation and Maintenance," requires all facilities and control systems to be operated as efficiently as possible and maintained in good working order.

23. The proper operations and maintenance requirements are set forth at 40 C.F.R. § 122.41(e).

24. The EPA inspection revealed that the City failed to properly operate and maintain the wastewater treatment facility by:

- a. failing to maintain its fountain aerators in good working order, thereby reducing the efficiency of the lagoon system;
- b. failing to regularly calibrate the pH and dissolved oxygen meter and failing to maintain a calibration log; and
- c. failing to address significant inflow and infiltration ("I&I") in the collection system that has caused SSOs, including basement backups, within the collection system.

25. The City's failure to properly operate and maintain the wastewater treatment facility is a violation of 40 C.F.R. § 122.41(e) and the terms and conditions of the City's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order for Compliance

Based on the FINDINGS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below:

26. *Operations and Maintenance.* Within 30 days of the effective date of this Order, the City shall identify and thereafter implement all necessary actions to correct the deficiencies cited above, and to comply with the conditions and limitations of its NPDES permit.

27. *Compliance Plan - Effluent Limitations and I&I.* Within 60 days of the effective date of the Order, the City shall submit to EPA, with a copy to IDNR, a comprehensive written plan for achieving compliance with the City's permitted effluent limitations at the wastewater treatment facility and for eliminating SSOs in the collection system (the "Compliance Plan"). The Compliance Plan shall describe in detail the specific actions to be taken or work to be completed, and why such actions or work are sufficient to ensure compliance with the effluent limitations and to eliminate SSOs in the collection system. The Compliance Plan shall include a detailed schedule for the proposed actions/work; all such actions/work shall be completed as soon as practicable, but no later than June 30, 2014. EPA will review and may provide comments on the City's Compliance Plan.

28. 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 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.

Submissions

29. *Reporting to EPA and IDNR:* The City shall submit to EPA, with a copy to IDNR, quarterly reports describing the actions the City has taken each quarter to comply with the terms of this Order. These reports are due every January 28, April 28, July 28, and October 28 until termination of this Order pursuant to Paragraph 38 below; the first report is due July 28, 2011. The City's report shall include, at a minimum:

- a. *Operation and Maintenance.* The initial report shall include a written description of the actions the City has taken pursuant to Paragraph 26;
- b. *Compliance Plan updates.* Each quarterly report shall provide a detailed update regarding the City's implementation of its Compliance Plan, including a description of work completed and milestones met during the previous quarter;
- c. *Sanitary Sewer Overflows.* Each quarterly report shall include a copy of any report of an SSO sent to IDNR as required by Respondent's NPDES permit; and
- d. *Monthly Discharge Monitoring Reports.* Each quarterly report shall include a copy of that quarter's Discharge Monitoring Reports.

30. All submissions by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify that the City of Denver has complied with all the applicable requirements of the Order for Compliance. I also 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.

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

Robert Bryant
Environmental Protection Specialist
Water Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

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

Joe Sanfilippo
Iowa Department of Natural Resources, Field Office #1
909 West Main Suite #4
Manchester, Iowa 52057.

General Provisions

Effect of Compliance with the Terms of this Order

33. 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.

34. 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

35. 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

36. 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.

Effective Date

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

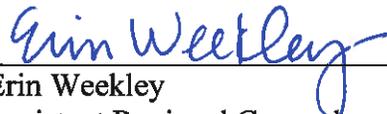
Termination

38. 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 4th day of May, 2011.



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



Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

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 Mike Isaacson
Mayor, City of Denver
100 Washington Street
Denver, Iowa 50622

and by first class mail to:

Joe Sanfilippo
Iowa Department of Natural Resources, Field Office #1
909 West Main Suite #4
Manchester, Iowa 52057.

MAY 05 2011

Date