

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

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2015-0106
The City of Osceola, 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 on Consent”) 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) 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 the Water, Wetlands and Pesticides Division .
2. Respondent, the City of Osceola, Iowa (“Respondent” or “the City”), is and was at all relevant times a municipality organized under the laws of the State of Iowa.
3. The EPA, together with the Respondent (hereafter collectively referred to as the “Parties”) 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 alleged noncompliance associated with the Respondent’s violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order on Consent, 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 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 on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by the EPA set forth in this Order on Consent.

### **General Allegations**

7. 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 in accordance with the terms of a NPDES permit issued pursuant to that Section.

8. 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.

9. The Iowa Department of Natural Resources (“IDNR”) is the state agency within the State of Iowa that has been authorized by EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

10. The City of Osceola, Iowa (hereafter “City” or “Respondent”), is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant, Respondent was, and still is, the owner and/or operator of a Publicly Owned Treatment Works (“POTW”) in Clarke County, Iowa, that includes a wastewater treatment plant (“WWTP”) and sewage collection system, which receive wastewater from various domestic and non-domestic sources. As defined by 40 C.F.R. § 403.3(q), a POTW includes but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

12. The POTW discharges to White Breast Creek in Clarke County, Iowa, and thereafter to the Des Moines River. White Breast Creek and the Des Moines River are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2, and 33 C.F.R. Part 328. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, *inter alia*, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce (hereinafter “traditional navigable waters”) and tributaries of such waters. 40 C.F.R. § 122.2.

13. White Breast Creek and the Des Moines River each have a bed, banks, and an ordinary high water mark and have been identified as perennial streams by the U.S. Geological Survey. White Breast Creek is a tributary of the traditionally navigable Des Moines River, and both are a water of the United States, as defined in 40 C.F.R. § 122.2.
14. The City's POTW is a "point source" that "discharges pollutants" to "navigable water" of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*
15. On or about April 28, 2003, IDNR issued the City NPDES Permit No. IA-2038002 which expired on April 27, 2008, and was administratively extended ("Current Permit").
16. On September 8-14, 2014, EPA performed a sampling inspection of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "EPA's inspection"). Sampling documented unauthorized discharges from an unpermitted outfall. The EPA inspector's review of the POTW's monitoring records documents non-compliance with the Current Permit's numeric limits for Carbonaceous Biological Oxygen Demand (CBOD), Ammonia (NH<sub>3</sub>), and Total Suspended Solids (TSS). EPA's inspector also documented the violations of monitoring requirements, failure to properly implement its Pretreatment program, and 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>) loading exceedances of the design capacity of the POTW.
17. At the conclusion of EPA's inspection, a Notice of Potential Violation (NOPV) was issued to the City. Negotiations on this Order commenced in May 2015. IDNR is currently preparing a revised permit for the WWTP.

### **Findings of Violation**

#### **Violation of Numeric Limits**

18. The facts stated in Paragraphs 7 through 17 above, are hereby incorporated by reference.
19. Based on EPA's review of relevant information, including copies of Monthly Operating Reports ("MORs") submitted by the City to the IDNR pursuant to the Current Permit, EPA has determined that the City violated the effluent limitations in the Current Permit for discharges from Outfall 001, as identified in Attachment A to this Order. These violations include exceedances of the Current Permit's limits for TSS, Nitrogen (N) and CBOD that occurred between April 2012 and January 2015.

#### **Violations of Monitoring Requirements**

20. The "Monitoring and Reporting Requirements" Section of the Current Permit states that "Analytical and sampling methods specified in 40 CFR Part 136 or other methods approved in writing by the department shall be utilized." Based on EPA's review of relevant information the City violated the monitoring requirements of the Current Permit as follows:

- a. dilution water quality control checks for CBOD tests exceeded the minimum depletion allowance of 0.2 mg/l;
- b. nitrification inhibitor was improperly added to the blank water quality check;
- c. failure to properly follow the required test procedure for TSS analysis (drying temperature, sample control procedures); and
- d. failure to follow the required test procedure for ammonia (as Nitrogen).

### **Operation above Design Capacity**

21. The "Design Capacity" Section of the Current Permit states "Wastes in such volumes or quantities as to exceed the design capacity of the treatment works or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of the treatment works and are prohibited by rule IAC 567-62.1(7)." The WWTP's average daily design flow is documented as 1.065 million gallons per day (MGD), and the BOD design loading is documented as 4,063 pounds per day (lbs/day). Based on EPA's review of relevant information the BOD loadings received by the WWTP exceeded the design capacity of the WWTP during ten months of 2013 (except June and July 2013), January through July 2014, October 2014 through March 2015, and May through July 2015 in violation of this requirement.

### **Collection System Operation and Maintenance Violations**

22. Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits discharges of pollutants except as authorized by the CWA. The "Standard Conditions, Proper Operation and Maintenance" section of the Current Permit requires "All facilities and control systems shall be operated as efficiently as possible and maintained in good working order." At the time of EPA's inspection, Outfall 004 was continuously discharging into the receiving stream due to an inoperable or out of service shut-off valve, in violation of this requirement.

23. During the EPA's inspection a significant rainfall event occurred, and EPA's inspector observed violations of the requirements above as follows:

- a. discharge overflows from a manhole just prior to the treatment works that continued for nearly four hours and discharged into White Breast Creek.
- b. discharges from an overflow at the old wastewater plant lift station clarification unit for approximately six and a half hours into a small nearby intermittent tributary connected to White Breast Creek.

### **Complete Implementation of the Pretreatment Program**

24. The "Major Contributing Industries" Section of the Current Permit states that the City must "limit and monitor pollutants for each major contributing industry as required elsewhere in this permit,..." Based on EPA's review of relevant information the City violated the Pretreatment requirements of the Current Permit as follows:

- a. The Wayne Ringgold Decatur Solid Waste Commission (Commission) has not performed their required annual monitoring of their leachate discharges to the City. The Commission had not performed their annual monitoring requirements in violation of their City treatment agreement. At the time of the EPA inspection, the City was not monitoring the Commission to detect a violation of their permit.
- b. Clarke County Sanitary Landfill (Landfill) did not perform a metals evaluation when they attempted to fulfill their annual monitoring requirements. The missing parameters violated their City treatment agreement. At the time of the EPA inspection, the City was not monitoring the Landfill to detect a violation of their permit.

25. Respondent's violations of the Current Permit and the CWA, as described in Paragraphs 18 through 24, above, are violations of the requirement of the City's Permit, and as such are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

### **Order for Compliance**

26. Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED and Respondent hereby CONSENTS to take the actions described below.

27. Immediately upon receipt of this Order, Respondent shall take whatever actions are necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all the applicable requirements of its effective NPDES permit. In the event that any future effective permit allows for interim limits and/or conditions, prior to final limits and/or conditions becoming effective, Respondent shall comply with all such interim limits and conditions. Specifically, Respondent shall take actions to address and correct the following violations:

- a. Compliance with effective numeric limits;
- b. Compliance with all sampling and monitoring requirements;
- c. Limit loadings to the POTW to the design capacity;
- d. Fully implement the requirements for monitoring Significant Industrial User Discharges as required by the NPDES permit; and
- e. The elimination of unauthorized discharges .

28. *Schedule for Compliance* – By no later than sixty (60) days following receipt of this order, Respondent shall submit to EPA, for review and approval, with a copy to IDNR, a detailed Schedule for Compliance (“Schedule”) with interim and final action items as set forth in Paragraph 29 below, to be taken by the City to comply with all terms, limitations and conditions of the effective Permit.

29. The Schedule shall, at a minimum, include a detailed plan and schedule for correction of the deficiencies, modification of operation and maintenance procedures, installation of equipment and/or construction of new facilities to ensure all discharges from the City's POTW

comply with the secondary treatment standards and water quality-based limitations in the City's applicable Permit in effect at the time of receipt of this Order, and/or interim limits contained in any newly proposed or effective Permit. The schedule for implementing any proposed modification(s) must include interim milestones to be reported on an annual basis, unless noted otherwise below, and shall in no event exceed the deadlines set forth below:

- a. By no later than sixty (60) days following receipt of this order, Respondent shall submit a detailed Schedule, for review and approval by EPA pursuant to Paragraph 30, and shall identify one or more City personnel, with contact information, for purposes of communications regarding this Order;
- b. The detailed Schedule shall provide for correcting all deficiencies and meeting all applicable NPDES permit limitations as expeditiously as possible, but in no case later than October 31, 2018.

30. *Approval of Schedule and Implementation.* Upon receipt, the EPA will review the Schedule submitted by the City and, after consultation with the IDNR, shall approve the Schedule or require modification and resubmission of portions or all of such submittals pursuant to Paragraph 31, below. Upon written approval by the EPA, the City shall implement the provisions of the Schedule as a condition of compliance with this Order.

31. *Modifications.* If required by the EPA pursuant to Paragraph 30, above, the City shall within forty-five (45) days of receipt of any written comments from the EPA regarding the Schedule, make modifications and changes to it as directed by the EPA, and resubmit the Schedule to the EPA, with a copy to the IDNR. Upon written request, the EPA may grant a longer period of time for resubmission of such documents.

32. The City shall at all times comply with requirements established by the State of Iowa and IDNR regarding 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.

### **Semiannual Reporting**

33. Beginning April 28, 2016, Respondent shall submit semiannual reports (by no later than April 28 and October 28 each year) to EPA, with a copy to IDNR, until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 44, below, that describe the actions taken by City to comply with the terms of this Order. The semiannual reports shall include, at a minimum, the following information:

- a. *Progress Report* – a description, with dates, of activities completed under this Order within the reporting period, including a clear statement as to whether each item identified in the Schedule was completed on time and successfully, and the results achieved;

- b. *Anticipated Actions* –a brief list of the activities planned to comply with the terms of this Order during the next semiannual reporting period and a statement as to whether any delays are expected, and if so, an explanation of the reason for the delay, the anticipated length of delay and the actions the City is taking to remain on schedule (*Note*: a delay in completing any item under the Schedule does not relieve the City of the responsibility to meet the final compliance date under the Schedule, which may be extended only upon written consent by the EPA, after consultation with the IDNR); and
- c. *MORs* – submit to the EPA a copy of the signed MORs for the previous six-month reporting period (*Note*: as required by the Permit, the Respondent must submit the original signed MORs to the IDNR on a monthly basis).

34. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks and the Schedule required by Paragraphs 27 to 29, above, to achieve compliance with the Current Permit, or any future Permit. EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within five (5) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA review and approval a proposed schedule and tasks for completion of any additional work. Such proposed schedule and tasks shall be submitted within sixty (60) days of Respondent's receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a schedule for any such additional work, Respondent shall perform the specified tasks in accordance with the schedule and provisions contained therein.

### **Certification**

35. All submissions made by Respondent to the EPA 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.*

### **Submittals**

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

draper.seth@epa.gov

Documents that cannot be submitted electronically shall be submitted to:

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

37. A copy of each submittal to EPA shall be delivered to IDNR, as follows:

Ted Peterson, or his successor  
Environmental Program Supervisor  
Field Services and Compliance Bureau  
Iowa Department of Natural Resources  
Field Office 5, 7900 Hickman Road, Suite 200  
Windsor Heights, Iowa 50324

### **General Provisions**

#### **Effect of Compliance with the Terms of This Order for Compliance**

38. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

39. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

40. 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 Act, 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 Act for any violation whatsoever.

#### **Access and Requests for Information**

41. 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**

42. 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**

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

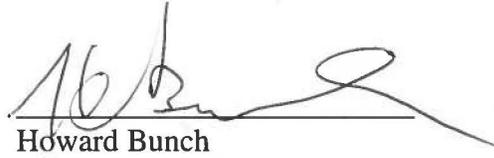
#### **Termination**

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

Issued this 21<sup>st</sup> day of December, 2015.



Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division



Howard Bunch  
Senior Assistant Regional Counsel  
Office of Regional Counsel

For the Respondent, City of Osceola, Iowa

Issued this 17 day of December, 2015.

  
\_\_\_\_\_  
Signature

City Administrator / Clerk  
\_\_\_\_\_  
Name  
Title

Attachment A:

<u>Date</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Concentration</u>	<u>Permit Limit</u>	<u>Monitored Exceedance</u>
April 2012	Solids, total suspended	001	7 Day Average	45	47.00
May 2012	Nitrogen, ammonia total [as N]	001	Monthly Average	9.6	9.66
July 2012	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	41.00
July 2012	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	26.56
September 2012	Solids, total suspended	001	Monthly Average	30	34.00
September 2012	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	32.17
October 2012	Solids, total suspended	001	7 Day Average	45	58.50
October 2012	Solids, total suspended	001	Monthly Average	30	33.47
October 2012	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	68.50
February 2013	Solids, total suspended	001	Monthly Average	30	34.63
April 2013	Solids, total suspended	001	7 Day Average	45	65.50
April 2013	Solids, total suspended	001	Monthly Average	30	40.00
May 2013	Solids, total suspended	001	Monthly Average	30	33.78
October 2013	Solids, total suspended	001	Monthly Average	30	30.10
November 2013	Solids, total suspended	001	Monthly Average	30	39.50
November 2013	Solids, total suspended	001	7 Day Average	45	52.50

November 2013	Nitrogen, ammonia total [as N]	001	Monthly Average	10	11.55
November 2013	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	59.00
November 2013	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	33.50
December 2013	Nitrogen, ammonia total [as N]	001	Monthly Average	11	14.37
February 2014	Solids, total suspended	001	Monthly Average	30	30.50
February 2014	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	26.57
March 2014	Solids, total suspended	001	Monthly Average	30	35.78
March 2014	Nitrogen, ammonia total [as N]	001	Monthly Average	13	17.17
March 2014	Nitrogen, ammonia total [as N]	001	Daily Maximum	25	25.48
March 2014	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	39.43
March 2014	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	51.50
April 2014	Solids, total suspended	001	7 Day Average	45	47.33
April 2014	Solids, total suspended	001	Monthly Average	30	37.62
April 2014	Nitrogen, ammonia total [as N]	001	Monthly Average	10	12.88
November 2014	Nitrogen, ammonia total [as N]	001	Monthly Average	10	12.71
November 2014	Nitrogen, ammonia total [as N]	001	7 Day Average	18	18.48
December	Nitrogen,	001	Monthly Average	11	11.06

2014	ammonia total [as N]				
January 2015	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	26.5

**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 Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by <sup>first class</sup> certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Ty Wheeler, City Administrator  
City of Osceola  
City Hall, P.O. Box 465  
Osceola, Iowa 50213

I further certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Ted Peterson,  
Environmental Program Supervisor, Field Services and Compliance Bureau  
Iowa Department of Natural Resources  
Field Office 5, 7900 Hickman Road,  
Suite 200  
Windsor Heights, Iowa 50324

12/22/15

Date

Kathy Revenson