

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

IN THE MATTER OF)	
)	Docket No. CWA-07-2016-0027
The City of Keokuk, Iowa,)	
)	
Respondent.)	FINDINGS OF VIOLATION
)	AND ORDER FOR COMPLIANCE
Proceedings under Section 309(a)(3))	
of the Clean Water Act,)	
33 U.S.C. § 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Findings of Violation are made and Administrative Order for Compliance (“Order”) is issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the U.S. 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 Keokuk, Iowa (“Respondent” or “City”).

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*, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 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. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (“POTW”).

4. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), prohibits the disposal of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of that Section, except in accordance with such regulations.

5. Pursuant to Section 405(d)(1) of the CWA, the EPA promulgated regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Part 503 (the “sludge management program”). These regulations establish recordkeeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for

the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

6. The Iowa Department of Natural Resources (“IDNR”) is the state agency within the State of Iowa that has been authorized by the EPA to administer the federal NPDES and Pretreatment Programs pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and applicable implementing regulations, including 40 C.F.R. Part 403. As such, the IDNR is the Approval Authority for the Pretreatment Program in Iowa.

7. The State of Iowa has not applied for or obtained primary authority to administer and enforce the sludge management program pursuant to Section 402(b) or 405(c) of the CWA, 33 U.S.C. §§ 1342(b) or 1345(c). The EPA directly implements the sludge management program in Iowa, and is therefore the “permitting authority,” as defined by 40 C.F.R. § 503.9(p), for purposes of the sludge management program.

8. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

General Findings

9. The City of Keokuk, Iowa is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. At all times relevant, Respondent was, and still is, the owner and/or operator of a POTW in Lee County, Iowa, that includes a wastewater treatment plant (“WWTP”) and a sewage collection system that receives 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.

11. The WWTP discharges to the Mississippi River.

12. 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.

13. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*

14. The IDNR issued NPDES Permit No. IA0042609 (“Permit”) on April 1, 2012, to Respondent pursuant to the authority of Section 402 of the CWA, 33 U.S.C. § 1342. The Permit was modified on March 1, 2013, and expires on March 31, 2017.

15. Respondent’s Pretreatment Program was approved by the IDNR pursuant to the authority of Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1307 and 1342, on or about August 4, 1983.

16. Pages 15 and 16 of the modified Permit includes requirements for Major Contributing Industries. These requirements include the following:

- a) Paragraph 3 requires the City to implement and enforce its approved Pretreatment Program and any amendments thereto. The City's approved Pretreatment Program requires it to implement the General Pretreatment Regulations at 40 C.F.R. Part 403.
- b) Paragraph 6, requires the City to evaluate its approved Pretreatment Program for compliance with 40 CFR 403 and Iowa Administrative Code 567- Chapter 62 with respect to the Pretreatment streamlining rule, published in the Federal Register on October 14, 2005, which revised the General Pretreatment Regulations. The evaluation was to be submitted to the IDNR by April 1, 2013, and was to include a proposal for any modifications to correct deficiencies.

17. Page 14 of the modified Permit includes requirements for, Sewage Sludge Handling and Disposal Requirements ("Sludge Regulations"). Paragraph 1 of this section reiterates the City's obligation to comply with all existing Federal and State laws and regulations that apply to the use and disposal of sewage sludge.

18. The Standards for the Use or Disposal of Sewage Sludge, at 40 C.F.R § 503.13(a)(1), prohibit application of sewage sludge to land if the concentration of any pollutant in the sewage sludge exceeded the ceiling concentration of certain pollutants, including the ceiling concentration of 75 milligrams per kilogram ("mg/kg") for molybdenum.

19. On or about August 6, 2015, the EPA performed a Pretreatment Program Audit ("Audit") of the City's Pretreatment Program implementation activities pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). A copy of the Audit report was sent to the IDNR and the City on or around November 6, 2015.

20. During the Audit, the EPA auditor interviewed City Pretreatment personnel and reviewed documents, including the City's Ordinance and records maintained by the City regarding its implementation of the Pretreatment Program.

FINDINGS OF VIOLATION

Count 1

Sludge Management Program Violations

21. The facts stated in Paragraphs 1 through 20 above, are hereby incorporated by reference.

22. Based on information and data collected during the Audit and other relevant information, the Respondent failed to comply with Standards for the Use or Disposal of Sewage Sludge, at 40 C.F.R § 503.13(a)(1), by land applying sewage sludge containing molybdenum in excess of 75 mg/kg during reporting years 2011, 2013, 2014 and 2015.

23. Respondent's violations identified in Paragraph 22 above are violation of the Standards for the Use or Disposal of Sewage Sludge, 40 C.F.R. Part 503, and as such are violations of Section 405 of the CWA, 33 U.S.C. § 1345.

Count 2
Approved Pretreatment Program Violations

24. The facts stated in Paragraphs 1 through 23 above, are hereby incorporated by reference.

25. Based on information and data collected during the Audit and other relevant information, the Respondent failed to implement its approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403, as follows:

- a. Respondent failed, in violation of 40 C.F.R. § 403.5(c), to enforce specific local limits developed to prohibit any user from introducing pollutants into the POTW that may cause pass through or interference. The City's local limits, expressed in its Sewer Use Ordinance, are written in such a manner that the City can only determine compliance by a user if the WWTP plant headworks and the discharge from the user are sampled simultaneously. The City does not conduct such simultaneous sampling, and therefore is unable to determine whether a user is in compliance with or in violation of the Sewer Use Ordinance.
- b. Respondent failed, in violation of 40 C.F.R. § 403.5(c), to develop and enforce a local limit for molybdenum to ensure the City's sewage sludge does not exceed the maximum ceiling concentration set forth in 40 C.F.R. § 503.13(a)(1).
- c. Respondent failed, in violation of its Permit, to evaluate its approved Pretreatment Program to determine if any modifications were needed to comply with the General Pretreatment Regulations streamlining changes of October 14, 2005, and to submit the evaluation, with any proposed changes, to the IDNR by April 1, 2013.

26. Respondent's violations identified in Paragraph 25 above are violations of the requirement of its Permit to implement its approved Pretreatment Program, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d), and regulations promulgated thereunder at 40 C.F.R. Part 403.

Reasonable Time to Achieve Compliance

27. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that the Respondent must immediately comply with requirements of Section 405 of the CWA, 33 U.S.C. § 1345, and that two (2) months is a reasonable time for Respondent to achieve compliance with the requirements of this Order, including evaluating and making any necessary revisions to its approved Pretreatment Program and Sewer Use Ordinance.

ORDER FOR COMPLIANCE

28. Based on the foregoing FINDINGS 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:

29. In accordance with this Order, the Respondent shall immediately comply with: a) all sewage sludge requirements of Section 405 of the CWA, 33 U.S.C. § 1345, and its implementing regulations at 40 C.F.R. Part 503, including but not limited to the pollutant ceiling concentration limitations; and b) all requirements of its Permit and approved Pretreatment Program.

30. By no later than April 25, 2016, the Respondent shall submit to the EPA, for review and comment as set forth in Paragraph 31, below, the following:

- a) A draft local limits analysis for all pollutants currently listed in the City's Sewer Use Ordinance, any pollutants regulated by the Sludge Regulations, 40 C.F.R. Part 503, and the pollutants Biochemical Oxygen Demand (or Carbonaceous Biochemical Oxygen Demand), Total Suspended Solids, and ammonia (or Total Kjeldahl Nitrogen). The analysis shall follow the EPA's Local Limits Development Guidance, July 2004; and
- b) A statement certifying that the City as reviewed its approved Pretreatment Program and Sewer Use Ordinance to determine if any changes are needed to fully comply with the General Pretreatment streamlining regulation changes, and if any changes are needed, provide proposed modifications to its approved Pretreatment Program and Sewer Use Ordinance that addresses the General Pretreatment streamlining regulation changes.

31. Each submittal made by the Respondent pursuant to Paragraph 30, above, will be reviewed by the EPA for completeness and sufficiency, and managed as follows:

- a) If the EPA determines the information is complete and sufficient, the Respondent will be notified by the EPA, by mail or email, to promptly submit the proposed revisions to the City's approved Pretreatment Program and Sewer Use Ordinance to the IDNR for approval.
- b) If the EPA notifies the City, by mail or email, that that further revisions are needed, the City shall make such revisions and resubmit the proposed changes to the Pretreatment Program and Sewer Use Ordinance to the EPA within thirty (30) calendar days of receipt of EPA's notice.
- c) If the City believes it needs additional time to complete one or more of the requirements of this Order, the City shall submit a request by mail or email to Paul Marshall, at the address identified in Paragraph 33 below, indicating the tasks for which more time is needed and the period of additional time requested. Any decision by the EPA to grant such request shall be in writing and delivered to the City by mail or email.

Certification

32. Each submission 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

33. All documents required for submittal to the EPA shall be sent by certified mail, return receipt requested, or by email to:

Paul T. Marshall, Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
11201 Renner Blvd
Lenexa, Kansas 66219

Marshall.Paul@epa.gov

General Provisions

Effect of Compliance with the Terms of This Order

34. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of liability for its responsibility to obtain and comply with any required local, state and/or federal permits.

35. 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.

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 Section 309 of the CWA, 33 U.S.C. § 1319,

for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the 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

37. Nothing in this Order shall limit the 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

38. 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

39. 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.

Failure to Comply

40. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court for the Southern District of Iowa may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the CWA as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

Judicial Review

41. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

Opportunity to Confer

42. Respondent has the opportunity to confer with and/or submit information to the EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondent. Within ten calendar days of receipt of this Order, Respondent may request a conference regarding the Order or may submit information to the EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 30 calendar days of receipt of this Order. The EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

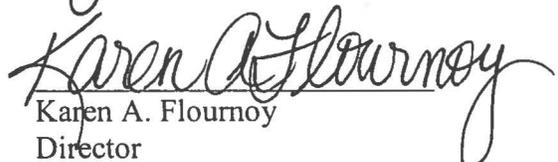
Effective Date

43. The terms of this Order shall be effective and enforceable against Respondent 30 calendar days after 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.

Issued this 22nd day of February 2016.



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
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 Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa, Kansas 66219.

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

The Honorable Tom Marion
Mayor, City of Keokuk, Iowa
415 Blondeau Street
Keokuk, Iowa 52632

and by first class mail to:

Ted Petersen
Iowa Dept. of Natural Resources, FO5
7900 Hickman Rd., Ste. 200
Windsor Heights, Iowa 50324

Deborah Quade
Iowa Dept. of Natural Resources, FO6
1023 W. Madison
Washington, Iowa 52353

2-23-2016
Date

