

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Iowa City, Iowa) Docket No. CWA-07-2020-0103
)
)
Respondent) FINDINGS OF VIOLATION AND
) 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. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order on Consent”) are made and 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 Enforcement and Compliance Assurance Division.
2. Respondent is the city of Iowa City, Iowa (“Respondent” or “the City”) and was at all relevant times a municipality organized under the laws of the state of Iowa.
3. EPA, together with the Respondent 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 Respondent’s alleged noncompliance with the CWA and 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 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 neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations 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.

Statutory and Regulatory Framework

6. 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, 33 U.S.C. § 1342 provides that pollutants may be discharged in accordance with the terms of an NPDES permit issued pursuant to that Section. Section 307 of the CWA, 33 U.S.C. § 1317 of the CWA, provides for the promulgation of regulations establishing pretreatment standards.

7. 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.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States,” which in turn has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

9. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

10. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works (“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.

11. To implement Section 307 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 403. Under 40 C.F.R. §§ 403.5(c) and 403.8(f)(4), a POTW that is required to develop a pretreatment program must develop and enforce specific limits, known as “local limits,” to implement the general and specific prohibitions in 40 C.F.R. § 403.5(a) and (b). Under 40 C.F.R. § 403.5(c), each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

12. The Iowa Department of Natural Resources (“IDNR”) is the state agency in Iowa with the authority 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. IDNR is the Approval Authority for the Pretreatment Program in Iowa. EPA retains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA's General Allegations

13. Respondent is a "person," as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Respondent is the owner and/or operator of a POTW in Iowa City, Iowa, that includes a sewage collection system, which receives wastewater from various domestic and non-domestic sources, and a sewage treatment plant ("STP"), consisting of an activated sludge wastewater treatment plant equipped with two bar screens, two vortex grit units for grit removal, a flow equalization basin (17.6 million gallons), five primary clarifiers, four ten-cell activated sludge trains, two bio-augmentation re-aeration reactors ("BAR"), 25 million gallon per day ("MGD") mixed liquor pumping station, six secondary clarifiers, sludge dewatering with 484,000-gallon high strength tank, six digesters (two thermophilic tanks and four mesophilic tanks), covered sludge storage, and a ultraviolet ("UV") disinfection system.

15. The STP discharges through an outfall ("Outfall 001") to the Iowa River. The Iowa River is a "water of the United States" and, therefore, "navigable water" pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. The STP is also equipped with three additional outfalls, Outfall 002, Outfall 003, and Outfall 004. Outfall 002 is a bypass outfall from the equalization basin overflow, that can discharge to the Iowa River. Outfall 003 consists of the discharge of treated irrigation water to Kickers Soccer Field and Outfall 004 consists of the discharge of treated irrigation water to Napoleon Park Ball Fields and Terry Trueblood Recreation Area turf irrigation.

17. The Iowa River is impaired by *E. coli* and bacteria. A Total Maximum Daily Load ("TMDL") has not been recorded for this waterbody.

18. The STP is a "point source" that "discharges pollutants" to "navigable waters" of the United States, as these terms are defined by Section 502(14), (12) and (7) of the CWA, 33 U.S.C. § 1362(14), (12) and (7), respectively.

19. On May 1, 2014, the IDNR issued NPDES permit number IA0070866 to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 ("NPDES Permit"), effective until April 30, 2019. On December 2, 2015, the NPDES Permit was amended to remove the zinc schedule of compliance to require effective permit limits for the parameter of zinc and to add Outfalls 003 and 004 to the permit. On June 1, 2017, the NPDES Permit was amended again to remove the Nutrient Reduction Requirements page and to add annual average mass limits for total nitrogen and total phosphorus. The NPDES Permit authorizes discharges from the associated outfalls of the STP to the Iowa River subject to conditions and limitations set forth in the NPDES Permit. A timely renewal application was received by the IDNR on November 1, 2018. Pursuant to Standard Condition 11, the NPDES Permit remains in effect until IDNR makes a final determination on the permit application.

20. Respondent's NPDES Permit contains: Effluent Limitations; Monitoring and Reporting Requirements; Special Monitoring Requirements; Land Application of Wastewater

Special Conditions; Additional Operating, Monitoring, and Reporting Requirements; Sewage Sludge Handling and Disposal Requirements; Significant Industrial User Limitations; and Standard Conditions.

21. 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. § 1317 and 1342, on or about February 29, 1984.

22. On January 14, 2019, IDNR staff conducted an inspection of the POTW. The IDNR inspection report cited instances of non-compliance which included exceedance of NPDES Permit effluent limits for the parameter of zinc. IDNR issued a Notice of Violation to Respondent on April 16, 2019 for the failure to comply with the zinc effluent limits listed in the NPDES Permit.

23. On April 1-4, 2019, EPA performed a Compliance Sampling Inspection of the City's STP ("Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

24. During the Inspection, the EPA inspector reviewed and collected copies of records relating to the Permit, observed the City's POTW, including the collection system, STP, and discharge location, and collected influent and effluent samples.

25. A copy of the Inspection Report was sent to the City on or about June 26, 2019.

26. On or about September 19, 2019, the EPA issued a request for information to the City pursuant to the authority of Section 308(a) of the CWA, U.S.C. § 1318(a), requiring submittal of information, among other things, regarding the operation of the POTW, communications between the City and industrial users, and plans to address compliance with the POTW's NPDES Permit.

27. The City submitted an initial response to the information request by letter and Statement of Certification dated October 17, 2019 ("City's Information Request Response"), which was received by the EPA on or about October 28, 2019. The City provided information including, but not limited to, DMRs from April 2014 through September 2019, projects, plans, procedures, and studies related to operation and maintenance of the STP and collection system, records of repairs and capital improvements of the STP, and information regarding wastes received from industrial users. The City continued to provide information in response to the information request, including a second response that was received by the EPA on or about November 22, 2019 and a third response that was received by the EPA on or about December 9, 2019.

28. On November 5, 2019, EPA performed a Pretreatment Audit ("Pretreatment Audit") of the City's approved Pretreatment Program under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

29. A copy of the Audit report was sent to the IDNR and the City on or around December 27, 2019.

EPA's Findings of Violation

Count 1

Failure to Comply with Effluent Limitations

30. The facts stated above are re-alleged and incorporated herein by reference.

31. Respondent's NPDES Permit states that the POTW is prohibited from discharging pollutants except in compliance with the effluent limitations established in the NPDES Permit. The NPDES Permit establishes effluent limits with monitoring and reporting requirements for the POTW's Outfall 001, including daily maximum and monthly average limits for zinc.

32. The Effluent Limitations section of Respondent's NPDES Permit requires that the Monthly Average and the Daily Maximum level of zinc in the POTW's effluent shall be less than 0.2563 milligrams per liter (mg/L).

33. Based on observations and sampling documented during the Inspection and EPA's review of information provided by the City, effluent monitoring data for the STP, and other relevant information, EPA finds that on at least 74 days from June 2016 to October 2019, the City violated the daily maximum effluent limitation for zinc and violated the monthly average effluent limitation for zinc in February 2019 for Outfall 001 set forth in its NPDES Permit.

34. Each failure to comply with effluent limitations is a violation of the terms and conditions of Respondent's NPDES permit and, as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Continue to Develop Local Limits

35. The facts stated above are re-alleged and incorporated herein by reference.

36. Pursuant to 40 C.F.R. § 403.5(c) and the Significant Industrial User Limitations, Monitoring, and Reporting Requirements section of Respondent's NPDES Permit, the City must develop, enforce, and evaluate the adequacy of local limits to meet the general prohibitions against interference and pass through listed in 40 C.F.R. § 403.5(a) and the specific prohibitions listed in 40 C.F.R. § 403.5(b). In addition, 40 C.F.R. § 403.5(c) specifically requires the City to continue to develop these limits as necessary.

37. Based on discussions and documentation collected during EPA's Pretreatment Audit, the local limits calculated by the City in 2015 and approved by IDNR in September 2016, specifically for zinc, were calculated using an estimated treatment plant removal efficiency.

38. Subsequent to calculating local limits in 2015, the City conducted increased sampling of the City's collection system influent and the STP's effluent in order to identify additional sources of zinc. In addition, the City took measures to modify the STP treatment processes to attempt to reduce zinc levels in the effluent, which ultimately were not successful in preventing

zinc exceedances.

39. During the Pretreatment Audit, the EPA determined that the City had collected sufficient STP influent and effluent sampling data by which a more accurate site-specific removal efficiency for the Iowa City STP could be derived and incorporated into the City's local limit calculation.

40. The City's failure to continue to evaluate and develop local limits utilizing the more accurate site-specific removal efficiency is a violation of 40 C.F.R. Part 403 and the terms and conditions of Respondent's NPDES Permit and Pretreatment Permit, as such, is a violation of Sections 307 and 402 of the CWA, 33 U.S.C. § 1317 and 1342(p).

Order for Compliance on Consent

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

42. In accordance with this Order, the Respondent agrees to take all necessary actions to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES Permit as soon as possible but no later than eighteen (18) months after the effective date of this Order ("Final Compliance Date").

43. *Compliance Plan.* By no later than sixty (60) days after the effective date of this Order, the City shall submit to the EPA, with a copy to the IDNR, a comprehensive written plan (the "Compliance Plan") for achieving compliance with the City's NPDES and Pretreatment Permits.

- a. The Compliance Plan shall describe in detail the actions to be taken or work to be completed, including, at a minimum:
 - i. A revision of the local limits calculation for zinc using the site-specific removal efficiency factor for the STP (to be submitted to the IDNR for approval by no later than thirty (30) days after the effective date of this Order);
 - ii. The procedures and timetable for revision of the City's Sewer Use Ordinance with new approved local limits; and
 - iii. Revised Pretreatment Permits issued by the City to Significant Industrial Users by no later than six (6) months after the effective date of this Order to incorporate the revised local limits, including any compliance schedules required to be incorporated into the Pretreatment Permits.
- b. The Compliance Plan shall include an implementation schedule with a proposed sequential milestone schedule for completing any proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than eighteen (18) months after the effective date of this Order.

- c. The EPA will promptly review, and may provide written comments on, the City's Compliance Plan.

44. *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 the IDNR, that it has completed all actions required pursuant to this Order on Consent and achieved compliance with its NPDES Permit.

45. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 56 below or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

46. *Quarterly Reports.* In addition to the submittal required by Paragraph 43, above, the City shall submit to EPA, with a copy to the IDNR, quarterly reports describing the actions the City has taken to comply with the terms of this Order, including at a minimum: copies of the IDNR approval of the revised local limits; copies of any modification and/or amendment to the City's Pretreatment Permit, NPDES Permit, or Sewer Use Ordinance, and Pretreatment Permits issued by the City to Significant Industrial Users, including any compliance schedules, that were issued or received during the reporting period; monthly discharge monitoring reports for the reporting period; and notification of any noncompliance with the Permit during the reporting period. These reports are due by March 31, June 30, September 30, and December 31 during the Compliance Plan implementation period until termination of this Order pursuant to Paragraph 57, below.

47. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 50 below, shall be submitted by electronic mail to:

tipton.lantz@epa.gov

Lantz Tipton, or his successor
U.S. Environmental Protection Agency – Region 7
Enforcement and Compliance Assurance Division
Water Branch
11201 Renner Boulevard
Lenexa, Kansas 66219

48. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

49. All documents required to be submitted pursuant to this Order shall also be submitted electronically and by mail to IDNR to the address provided below:

deborah.quade@dnr.iowa.gov

Deborah Quade, Supervisor
Field Office #6
Iowa Department of Natural Resources
1023 W. Madison St.
Washington, Iowa 52353-1623

50. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

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 violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

51. 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.

52. 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. 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

53. 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

54. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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

55. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Modification

56. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

57. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

For the Complainant, U.S. Environmental Protection Agency:

Issued this _____ day of _____, 2020.

David Cozad
Director
Enforcement and Compliance Assurance Division

Shane E. C. McCoin
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, City of Iowa City:

Bruce Teague
Signature

03/24/2020
Date

Bruce Teague
Name

Mayor
Title

Keecie K. Furlong
Attest

Certificate of Service

I certify that on the date noted below I delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Hearing 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 for Compliance on Consent by electronic mail, return receipt requested, to:

bruce-teague@iowa-city.org
The Honorable Bruce Teague
Mayor, Iowa City
401 East Washington St.
Iowa City, Iowa 52240

and via electronic mail to:

deborah.quade@dnr.iowa.gov
Deborah Quade, Supervisor
Field Office #6
Iowa Department of Natural Resources
1023 W. Madison St.
Washington, Iowa 52353-1623

Date

Signature