

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-07-2011-0076  
)  
THE CITY OF MITCHELLVILLE, 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 Mitchellville, Iowa (hereafter "Respondent" or "City"), operates a Publicly Owned Treatment Works ("POTW") in the state of Iowa that treats domestic and industrial 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 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 a tributary of Camp Creek, 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. The IDNR granted NPDES Permit No. IA-0021997 to Respondent for discharges from its POTW to a tributary of Camp Creek. The permit (hereafter “2001 NPDES permit”) became effective December 10, 2001, with an expiration date of December 9, 2006. The 2001 NPDES permit has been administratively extended by IDNR.

14. On October 18 through 21, 2010, 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.

15. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the 2001 NPDES permit, and observed the POTW 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 2001 NPDES permit;
- b. discharges of solids in the receiving stream; and
- c. identification by the City of significant inflow and infiltration ("I&I") and related discharges of partially treated wastewater (bypasses) from the POTW.

16. On April 25, 2011, the EPA received a response from the City to a request for information (hereafter "EPA Information Request") issued by the EPA to the City on April 6, 2011, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

#### **Findings of Violation**

17. The facts stated in Paragraphs 8 through 16, above, are herein incorporated.

#### **Count I**

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

- a. total suspended solids ("TSS") – weekly average concentration-based limitation of 45 mg/L, 30 day average concentration-based limitation of 30.0 mg/L, weekly average mass-based limitation of 634 lbs per day, 30 day average mass-based limitation of 423 lbs per day and compliance with a removal efficiency of 85%;

19. 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 NPDES permit concentration and mass limitations for TSS, and has failed to meet the removal efficiencies for TSS, including the following:

- a. TSS
- i. the City exceeded the 30 day average concentration NPDES permit limitation for TSS during the months of March 2008, April 2008, May 2008, June 2008, August 2008, November 2008, November 2009, March 2010, May 2010, June 2010, September 2010, January 2011 and April 2011;
  - ii. the City exceeded the seven day average concentration NPDES permit limitation for TSS during the months of November 2007, January 2008, April 2008, May 2008, June 2008, July 2008, August 2008, November 2008, October 2009, November 2009, December 2009, March 2010, May 2010, June 2010, August 2010, September 2010, January 2011, and April 2011;
  - iii. the City exceeded the 30-day average mass NPDES permit limitation for TSS during the months of June 2008, August 2008 and April 2011;
  - iv. the City exceeded the seven day average mass NPDES permit limitation for TSS during the months of March 2008, April 2008, May 2008, June 2008, July 2008, August 2008, November 2009, March 2010, May 2010, August 2010, September 2010, and April 2011;
- b. removal efficiency
- i. the City did not meet the NPDES permit requirement for the removal efficiency of TSS during the months of April 2008, June 2008, July 2008, October 2008, and November 2008; February 2009, March 2009, April 2009, May 2009, June 2009, July 2009, August 2009, September 2009, October 2009, November 2009, and December 2009; January 2010, February 2010, March 2010, May 2010, June 2010, July 2010, August 2010, September 2010; and January 2011 and April 2011.

20. 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

21. Condition #8 of the Standard Conditions section of the City's 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.

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

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

- a. failing to properly install and regularly calibrate the flow meter ; and
- b. failing to address significant inflow and infiltration (“I&I”) in the collection system that has contributed to the discharge of solids and partially treated wastewater from the POTW and numerous exceedences of the effluent limitations found in the City’s NPDES permit.

24. 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:

25. Immediately upon the Effective Date 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 of the applicable requirements of its NPDES permit.

26. Within thirty (30) days of the Effective Date of this Order, Respondent shall submit information to the EPA, with a copy to IDNR, as follows:

- a. An explanation of actions taken and/or plans for action to be taken to correct the violations cited herein; and
- b. An explanation of operation and maintenance (O&M) processes and procedures developed, revised and implemented to prevent future violations and ensure compliance with the NPDES permit requirements.

27. *Sewer System Evaluation Survey.* Within 180 days of the effective date of the Order, the City shall submit to the EPA, with a copy to IDNR, a Sewer System Evaluation Survey (“SSES”) that shall describe in detail the specific actions to be taken or work to be completed,

and why such actions or work are sufficient to address I&I. The EPA will review and may provide comments on the City's SSES. **The SSES shall:**

- a. Identify Sewersheds organized by sub-basins with excessive I&I, such that these conditions are causing and/or contributing to SSOs, Building/Private Property Backups, effluent limit violations and overloading and/or Bypasses at the POTW;
- b. Identify and quantify sources of I&I within the Sewersheds determined to have Excessive I&I rates;
- c. Identify cross connections and unauthorized connections;
- d. Identify physical degradation of the collection system that causes or contributes to SSOs or Building/Private Property Backups;
- e. Prioritize sub-basins based on I&I contribution and wet weather peaking factors;
- f. Include a summary of the work to date in addressing I&I and a compliance schedule for performing and completing the remainder of the work as expeditious as possible;

28. *POTW Remedial Measures Plan.* Within 180 days of the submission of the SSES, the City shall submit to the EPA, with a copy to IDNR, a comprehensive written plan that 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 long-term compliance with the effluent limitations and to eliminate bypassing. The Plan shall include a detailed schedule for the proposed actions/work; all such actions/work shall be completed as soon as practicable. The EPA will review and may provide comments on the Plan.

- a. Include a POTW Remedial Measures Plan that will identify measures sufficient to result in adequate Capacity at its POTW, such that Bypasses and overloading at the WWTP, and WWTP NPDES permit noncompliance will be eliminated under current and future conditions;
- b. the POTW Remedial Measures Plan shall ensure that the peak flow capacity of the POTW is sufficient to treat the peak flow transported by the collection system. If the peak flow capacity of the POTW is insufficient to treat the predicted flow then remedial measures to increase peak flow capacity at the POTW shall be included in the remedial measures specified;
- c. the POTW Remedial Measures Plans shall include schedules that are as expeditious as possible for design, construction, and placement in service of all proposed measures. The schedules shall include the beginning design, complete design,

complete permitting, pipe replacement, award contract, beginning construction, and complete construction dates for each measure proposed.

29. After review of the information submitted by Respondent pursuant to the above paragraph, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

30. 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**

31. *Reporting to EPA and IDNR:* The City shall submit to the EPA, with a copy to the IDNR, semi-annual reports describing the actions the City has taken each of the last six months to comply with the terms of this Order. These reports are due every January 28 and July 28 until termination of this Order pursuant to Paragraph 38 below; the first report is due January 28, 2012. 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. **Semi-Annual Reports.** Each report shall provide a detailed update regarding the City's implementation of its SSES and Remedial Measures plan, including a description of work completed and milestones met during the previous six months;
- c. **Bypasses.** Each report shall include a copy of any report of a bypass sent to IDNR as required by Respondent's NPDES permit; and

32. 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 Mitchellville 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.

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

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

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

Ted Peterson  
Iowa Department of Natural Resources, Field Office #5  
401 SW 7<sup>th</sup>, Suite 1  
Des Moines, Iowa 50309.

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order**

35. 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.

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. 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.

### **Effective Date**

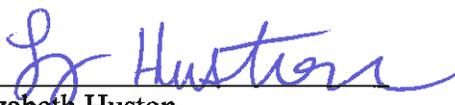
39. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

### **Termination**

40. 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 of the requirements of this Order have been met.

Issued this 14<sup>th</sup> day of July, 2011.

  
for Karen A. Flourney  
Acting Director  
Water, Wetlands and Pesticides Division

  
Elizabeth Huston  
Assistant Regional 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 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 David Wieslander  
Mayor, City of Mitchellville  
110 2<sup>nd</sup> Street NE  
Mitchellville, Iowa 50169

and by first class mail to:

Ted Peterson  
Iowa Department of Natural Resources  
Field Office #5  
401 SW 7<sup>th</sup> Suite 1  
Des Moines, Iowa 50309

Dennis Ostwinkle  
Iowa Department of Natural Resources  
Field Office #6  
1023 West Madison Street  
Washington, Iowa 1623.

**JUL 18 2011**

Date

