

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)

The City of Cedar Rapids, Iowa)
50 Second Avenue)
Cedar Rapids, Iowa 52401)

Respondent)

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

Docket No. CWA 07-2010-0172

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of 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 United States 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 Cedar Rapids, Iowa, a municipality located in the State of Iowa.

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. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, requires, in part, that a discharge of stormwater associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

8. 40 C.F.R. § 122.26(b)(14)(vi) defines “stormwater discharge associated with industrial activity,” in part, as “the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” A facility classified as Standard Industrial Classification 14 is considered to be engaging in “industrial activity” for purposes of paragraph (b)(14)(iii).

9. The Iowa Department of Natural Resources (IDNR) is the state agency with authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. The IDNR implemented a General Permit for the discharge of stormwater under the NPDES, Permit No.1 on October 1, 2007. The permit governs stormwater discharges associated with industrial activity for airports with over 50,000 flight operations per year.

Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of the Eastern Iowa Airport, located at 2515 Arthur Collins Parkway, SW, Cedar Rapids, Iowa, an airport that had over 50,000 flight operations per year (the “Facility”).

13. Stormwater, surface drainage and runoff water leave Respondent’s Facility and flow into Hoosier Creek, South Hoosier Creek, Plum Creek, Tissel Hollow Creek, Prairie Creek and Knapp Creek. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

14. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(viii), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent discharges pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. Respondent’s discharge of pollutants associated with its transportation facility which has vehicle maintenance shops, equipment cleaning operations, or airport deicing operations, as defined by 40 C.F.R. § 122.26(b)(14)(viii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. On or about January 10, 2003, Respondent resubmitted a Notice of Intent (NOI) for coverage under Iowa General Permit No. 1. The General Permit expired on January 10, 2008, but was extended by IDNR to January 10, 2013 and remains in effect.

20. On or about June 9, 2009, IDNR issued an individual NPDES permit to The Eastern Iowa Airport (TEIA). TEIA appealed the permit on July 10, 2009. To date, the permit is under appeal.

21. On March 31 and April 1, 2010, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 318(a). The purpose of the inspection was to evaluate compliance with the CWA.

Findings of Violation

Failure to Properly Conduct Sampling

22. The facts stated in Paragraphs 11 through 21 above are herein incorporated.

23. General Permit No. 1, Part V, Section B. 7 “Airports” requires that from the effective date of the permit until expiration, stormwater discharge associated with industrial activities from runways and areas used for aircraft deicing at airports with over 50,000 flight operations per year are subject to monitor for certain pollutant parameters during deicing events.

24. EPA’s inspection referenced in Paragraph 20, found that Respondent did not sample in 2006 or 2007 during a deicing event. Sampling in 2006 was conducted in April, on May 9, and August 10, but the sampling does not correspond to a deicing event. Sampling in 2007 was conducted on September 10 and also does not correspond with a deicing event.

25. Respondent's failure to conduct monitoring in accordance with its Permit is a violation of the terms and conditions of the 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) and 1342, and implementing regulations.

Failure to Update the SWPPP

26. The facts stated in paragraphs 11 through 21 above are herein incorporated.

27. General Permit No. 3, Part III.C.4.B states, "Each facility covered by this permit shall develop a description of stormwater management controls appropriate to the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility.... ."

28. The Stormwater Pollution Prevention Plans (SWPPP) available for review during the inspection contained a list of the non-structural controls and practices but did not contain documentation that the controls had been implemented.

29. General Permit No. 1, Part III.C. "Stormwater Pollution Prevention Plans" requires a SWPPP be developed for each facility covered by the permit. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity at the facility. General Permit No. 1, Part III.C.4.A(1) requires the SWPPP to include a site map showing an outline of the drainage area of each stormwater outfall; each existing structural control measure to reduce pollutants in stormwater runoff; and each surface water body. General Permit No. 1, Part III.C.3 requires the permittee to amend the plan whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the United States.

30. During the inspection referenced in Paragraph 21, EPA reviewed the current SWPPP for the Facility. The SWPPP available for review during the inspection did not describe the current deicing operations at the Facility. Also, the SWPPP did not accurately reflect the number of retention basins and ponds that were currently in use at the Facility.

31. Respondent's failure to update the SWPPP to reflect current site conditions and practices in accordance with its Permit is a violation of the terms and conditions of the 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) and 1342, and implementing regulations.

Failure to Adequately Perform Site Inspections

32. The facts stated in Paragraphs 11 through 21 above are herein incorporated.

33. General Permit No. 1, Part III.C. 4.C "Visual Inspection" states that qualified personnel shall inspect designated equipment and plant areas at appropriate intervals specified in the plan, but except as provided in paragraphs III.C.4.c(4) and (5) in no case less than once a

year. General Permit No. 1, Part III. C. 4.c(1) states that material handling areas and other potential sources of pollution identified in the SWPPP shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Structural stormwater management measures, sediment and control measures, and other structural pollution prevention measures identified in the SWPPP shall be observed to ensure that they are operating correctly. General Permit No. 1, Part III.C.4.c(3) requires the permittee to create a report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taking in accordance with Section III.C.4.c.(2). The inspection reports must be retained as part of the SWPPP for at least three years and shall be signed in accordance with Part VI.G of General Permit No. 1.

34. EPA's inspection, referenced in Paragraph 21, found that the inspection forms created by Respondent did not contain all the information required by the Permit. Further, the inspector's name was not identified on the report and the inspector did not sign the report.

35. Respondent's failure to conduct monitoring in accordance with its Permit is a violation of the terms and conditions of the 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) and 1342, and implementing regulations.

Failure to Retain Information

36. The facts stated in Paragraphs 11 through 21 above are herein incorporated.

37. General Permit No. 1, Part V, Section B.7 "Airports" requires that from the effective date of the permit until expiration, stormwater discharge associated with industrial activities from runways and areas used for aircraft deicing at airports with over 50,000 flight operations per year are subject to monitor for certain pollutant parameters during deicing events. The Permit requires that for each parameter measured the permittee must also include: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

38. During the EPA inspection, referenced in Paragraph 21, the inspector found that the storm event sampling data required by the permit was not included in the SWPPP data reviewed.

39. Respondent's failure to retain sampling information in accordance with its Permit is a violation of the terms and conditions of the 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) and 1342, and implementing regulations.

Order For Compliance

40. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in Paragraphs 41 through 43.

41. Within thirty (30) days of the Effective Date, as defined in Paragraph 51 herein, Respondent shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of its Permit. A report describing the steps taken to achieve compliance with the permits shall be submitted in accordance with Paragraphs 45 and 46, below by the thirtieth (30th) day following the effective date of the Order.

42. Within 45 days of the Effective Date as defined in Paragraph 51, herein, Respondent shall thoroughly revise the SWPPP to accurately reflect operations and conditions at the Facility. A copy of the revised SWPPP shall be submitted in accordance with Paragraphs 45 and 46, below.

43. From the Effective Date, as defined in Paragraph 51 herein, until terminated by EPA, the Respondent shall submit annually, no later than May 31, to IDNR, with a copy to EPA, all monitoring and sampling information required by General Permit No. 1, during the year. The Respondent shall also submit annually, no later than May 31, to IDNR, with a copy to EPA, copies of the inspection reports created by Respondent. Copies of these documents shall be submitted in accordance with Paragraphs 45 and 46, below.

Certification

44. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

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.

Submissions

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

Ms. Cynthia Sans
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

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

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

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

47. 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.

48. 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(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

49. 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

50. 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

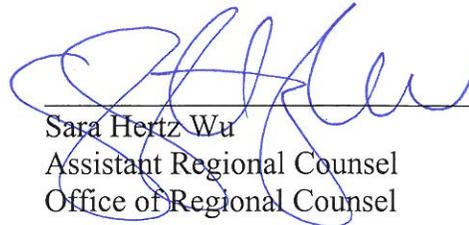
51. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

Termination

52. 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 5th day of October, 2010.


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Sara Hertz Wu
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 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:

City of Cedar Rapids, Iowa
City Hall
50 Second Avenue
Cedar Rapids, Iowa 52401;

Tim Bradshaw, Airport Director
The Eastern Iowa Airport
2515 Arthur Collins Parkway SW
Cedar Rapids, Iowa 52404-8952;

Sara Mau, Director of Operations
The Eastern Iowa Airport
2515 Arthur Collins Parkway SW
Cedar Rapids, Iowa 52404-8952;

Jane McAllister
Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231;

Mr. Joe Sanfilippo
Iowa Department of Natural Resources
909 W Main Street, Suite 4
Manchester, Iowa 52057; and

Mr. Dennis Ostwinkle
Iowa Department of Natural Resources
Field Office 6
1023 West Madison Street
Washington, Iowa 52353.

Date OCT 06 2010

