

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

IN THE MATTER OF)
)
)
THE CITY OF SPENCER, IOWA)
)
Respondent)
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a))
_____)

Docket No. CWA-07-2009-0018

FINDINGS OF VIOLATION and ORDER
FOR COMPLIANCE ON CONSENT

Background and Findings of Violation

Jurisdiction

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE ON CONSENT (Order) 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).

2. EPA is alleging that the Respondent, City of Spencer, Iowa ("City" or "Respondent"), discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and by further delegation by the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. Respondent owns and/or operates a Publicly Owned Treatment Works ("POTW") in the State of Iowa that treats domestic, commercial, and industrial wastewater. As defined by 40 C.F.R. § 403.3(q), a 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.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants by any person except in compliance with, inter alia, any permit issued under the authority of 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.

6. To implement the NPDES program under Section 402 of the CWA, EPA promulgated regulations, including those codified at 40 C.F.R. Part 122. The NPDES regulations at 40 C.F.R. § 122.1(b)(1), state that the NPDES program requires a permit for discharge of "pollutants" from any "point source" into "waters of the United States", as those terms are defined in Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

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(b) of the CWA, 33 U.S.C. § 1342(b), and EPA's implementing regulations. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Findings of Fact

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

9. The POTW owned and/or operated by the City includes a wastewater treatment facility ("WWTF") and four combined sewer overflow ("CSO") outfalls from which it discharges pollutants, as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), from "point sources", as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

10. The City discharges pollutants from these point sources into the Little Sioux River, which is a navigable water or Water of the United States under Section 502(7) of the CWA, 33 U.S.C. 1362(7).

11. The City's discharges of pollutants from its POTW require a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

12. IDNR granted NPDES Permit No. IA-0021059 ("Permit") to the City, effective March 9, 2001. The Permit expiration date was set for March 9, 2006, but the City timely filed for a new permit, which administratively extended the expiration of the Permit until such time as the Permit is reissued.

13. The Permit authorizes wet weather discharges to the Little Sioux River from the City's permitted CSO outfalls, provided the City complies with special conditions, including: discharges shall not cause or contribute to violations of State water quality standards; and development and submittal of a Long-Term Control Plan ("LTCP") within 36 months of permit issuance that includes a characterization of the combined sewer system, development and evaluation of CSO control alternatives and the selection and implementation of a long term

control plan, which includes an implementation schedule, operational plan and post-construction compliance monitoring plan.

14. In December 2004, the City submitted to IDNR a "draft" LTCP that failed to include the following: adequate system characterization; adequate evaluation of control alternatives; and selection and implementation of a long term control plan to address the City's CSO discharges.

15. The City submitted a Combined Sewer Overflow Plan of Action ("Plan of Action") to IDNR in March 2008, which included, among other provisions, a schedule to complete and submit a Sanitary and Storm Sewer System Evaluation Study ("SSES") by August 2009 to evaluate the physical and hydraulic condition of the City's sewer system. The Plan of Action sets forth the City's intention to eliminate the CSO discharges by separating the sanitary and storm sewer systems.

16. EPA finds that the failure of the City to submit a LTCP that meets the requirements set forth in its Permit by the required date is a violation of the 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.

Agreement of the Parties Concerning Compliance Activities

17. The City and Complainant agree to pay their own costs and attorneys' fees incurred as a result of this action.

18. Without either admitting or denying the findings of fact stated herein or any conclusions of law that could be drawn from such facts, the City consents to the issuance of this Order, hereinafter recited, and consents to perform the compliance activities as set forth in this Order. The City stipulates, however, that it will not contest the findings of facts or conclusions of law contained within this Order in any action initiated by EPA to enforce the provisions of this Order for Compliance on Consent.

19. The undersigned representative(s) of the City certifies that he or she is fully authorized to enter into the terms of this Order and to obligate the City to perform the compliance activities set for herein.

20. The City admits the jurisdictional allegations set forth above.

21. Nothing contained in this Order shall alter or otherwise affect EPA's ability to initiate an administrative or judicial enforcement action to recover penalties for any violations of the CWA including the violations set forth above, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Order for Compliance on Consent

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 hereby agrees and is ORDERED to take the actions described below.

NPDES Permit Compliance

22. The City shall at all times under this Order comply with all other effluent limitations, monitoring requirements and other conditions specified in the City's current NPDES Permit or any subsequent NPDES Permit.

Sewer Separation Project

23. The City shall implement the following measures to separate its sanitary and storm water systems and eliminate CSOs and, to the extent feasible, sanitary sewer overflows ("SSOs"):

- a. By August 31, 2009, submit to EPA and IDNR the SSES report identified in the City's March 2008 Plan of Action.
- b. By August 31, 2010 submit to EPA and IDNR a report identifying the proposed Project Plan and Implementation Schedule, with interim milestones and a final compliance date as soon as practicable, but no later than December 31, 2028, necessary to complete sewer repairs and construction projects to eliminate CSOs and rehabilitate sanitary sewers, including but not limited to the following: elimination, to the extent feasible, of SSOs; installation of new storm sewers in the combined sewer areas; rehabilitation of existing sanitary sewers; installation of new trunk sewers necessary to convey sanitary sewage to the wastewater treatment plant; and, any other projects necessary to complete the elimination of the CSOs. The interim milestones included in the Project Plan and Implementation Schedule shall identify projected periodic dates for completion of significant portions or phases of each sewer repair and construction project included in the report, with milestones no more than approximately one to two years apart for each project. This report shall also identify funding mechanisms which the City intends to utilize to finance the projects, as well as any contingency financing approaches that may be used.
- c. By December 31, 2028, complete all other projects necessary for elimination of CSOs and, to the extent feasible, SSOs within the City of Spencer's service area.

Review and Approval of Submissions

24. Upon receipt, EPA and IDNR will review the proposed Project Plan and Implementation Schedule submitted by Respondent pursuant to Paragraph 23.b., and approve it or require modification and resubmittal of a portion or all of the proposed Project Plan and Implementation Schedule pursuant to Paragraph 25, below.

25. If required by EPA and IDNR pursuant to Paragraph 24, above, Respondent shall, within forty-five (45) days of receipt of any written comments from EPA and IDNR regarding the documents submitted by Respondent pursuant to this Order on Consent, make modifications and changes to such documents as directed by EPA, and resubmit the documents to EPA and IDNR. The parties may agree, in writing, to a longer period of time for resubmission of such documents.

Approval and Implementation of Project Plan and Implementation Schedule

26. Upon approval by EPA, in consultation with IDNR, in accordance with Paragraphs 24 and 25 above, the proposed Project Plan and Implementation Schedule, including the interim milestones and final compliance date, submitted by Respondent pursuant to Paragraph 23.b. above shall be deemed incorporated into and become enforceable under this Order on Consent, or at EPA's discretion, shall be incorporated into, and become enforceable under, a separate order issued under the authority of the CWA.

Schedule Amendments

27. The Parties acknowledge and agree that the completion date set forth above in Paragraph 23.c. is based upon all conditions known and information available as of the date of issuance of this Order. If during implementation of this Order, new information becomes available showing that the scope and complexity of the sewer overflow elimination and sewer rehabilitation work will be significantly more extensive than originally anticipated, and that it will be technically impracticable to meet the completion date despite use of best efforts by Respondent, then Respondent may request and EPA shall in good faith consider granting an extension of time to complete the work. Any such request by Respondent for an extension of time shall be in writing and shall set forth in detail the new information that is the basis for the extension, and the reasons that Respondent believes it is technically impracticable, despite the use of best efforts, to meet the original completion date. In any request for extension, Respondent shall also propose and justify an alternative completion date. Any extension of time that is agreed to by the parties shall be in writing pursuant to Paragraph 38 herein.

28. In addition to the provisions of Paragraph 27 above, which allows Respondent to request an extension of time to complete work required by this Order, Respondent may also, with submittal of the Project Plan and Implementation Schedule report pursuant to Paragraph 23.b, request a meeting with EPA and IDNR to discuss the projected scope and duration of the work required by this Order based on new information available to Respondent after entry of this Order. The purpose of such a meeting would be for Respondent to present to EPA and IDNR any new or significantly different information that presents a fundamental change in

Respondent's understanding of the projects required to comply with this Order or the Respondent's financial situation, to the extent that such information negatively impacts Respondent's ability to complete the work required by this Order. Any revisions to this Order that are agreed to by the parties shall be made in writing pursuant to Paragraph 38 herein. Nothing in this Order or this Paragraph limits or prevents Respondent from consulting with EPA and/or the IDNR regarding the provisions of this Order, however no extensions of time or revisions to the scope or nature of the requirements of this Order are effective unless agreed to in writing by EPA and Respondent in accordance with Paragraph 38 herein.

Annual Progress Reports

29. By August 31, of each year, submit progress reports to EPA and IDNR, summarizing the projects completed pursuant to this Order. The reports shall describe the work performed during the previous twelve month period and include a projection of the work to be performed during the next twelve month period

Submissions

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

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

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

Dennis Ostwinkle
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353-1623.

32. *Certification.* Each submittal required by 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, as defined at 40 C.F.R. § 122.22, 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.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

33. Compliance with the terms of this Order shall not relieve the City of liability for the violations identified in this Order, or preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA including the violations set forth above, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

34. 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 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 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

35. 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

36. 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.

Titles and Headings

37. The titles, headings and subheadings within this Order are for informational purposes only for the convenience of the reader. As such, any inconsistencies between the title, headings and subheadings and the text of the Order shall be resolved in favor of the text.

Modification

38. There shall be no material modification of this Order without written approval by Respondent and EPA. Respondent may request and EPA will consider a modification of this Order if subsequent to its issuance there is a significant change in the CWA or its implementing regulations and further implementation of the activities required by this Order would be contrary to such change. The parties may agree to modify the schedule for completion of sewer repairs and construction projects to eliminate CSOs and rehabilitate sanitary sewers in accordance with Paragraph 27 of this Order.

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 from the Effective Date 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 U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

FOR COMPLAINANT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Issued this 20th day of January, 2009.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

FOR RESPONDENT, THE CITY OF SPENCER, IOWA:


Signature:

1-19-2009
Date

Reynold Peterson
Name:

Mayor
Title:



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 on Consent 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 Findings of Violation and Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Reynold Peterson
Mayor
1604 4th Avenue East
Spencer, Iowa 51301

Mark White
Public Works Director
City of Spencer
215 Sycamore Street
Spencer, Iowa 52761

Dennis Ostwinkle
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353-1623

Name:

Reynold Peterson

Date:

1/27/09