

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

IN THE MATTER OF)	Docket No. CWA 07-2016-0078
)	
THE CITY OF WEST UNION, IOWA)	
)	
A Municipality)	
)	COMPLAINT AND CONSENT
)	AGREEMENT / FINAL ORDER
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement and Final Order alleges that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

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

4. The City of West Union, Iowa (hereafter "Respondent" or "City"), is a political subdivision of the state of Iowa and a "municipality" within the meaning of 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater.

Statutory and Regulatory Framework of Section 301 of the CWA

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), 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, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section. To implement Section 402 of the CWA, EPA promulgated regulations thereunder, including 40 CFR 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.

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. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

8. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

Factual Background

9. The City of West Union is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. 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.

11. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources. The POTW includes a wastewater collection system and a sewage treatment plant (“STP”), which includes two trickling filters and various clarifying and holding cells, located at 9875 Echo Valley Road, West Union, Iowa.

12. The City’s POTW discharges to Otter Creek which is a “navigable water” and “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

13. The effluent from the City's POTW is a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

14. The City's POTW is a "point source" that "discharges pollutants" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

15. The City's discharge of pollutants from its POTW into a "water of the United States" requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. The IDNR issued NPDES Permit No. IA-0035378 ("2001 Permit") to the City for discharges from its POTW to Otter Creek. The Permit became effective September 27, 2001 with an expiration date of September 26, 2006. The Permit was administratively extended by IDNR pursuant to the Iowa Administrative Code, Chapter 567-64.8(455B). IDNR reissued the Permit on March 1, 2015 with an expiration date of February 29, 2020 ("Current Permit").

17. Respondent's 2001 Permit and Current Permit authorize Respondent to discharge pollutants only from specified point sources, including "Outfall 001" as identified in the Permit, for the discharges from a wastewater treatment facility subject to the effluent limitations and conditions set forth in the Permit.

18. Respondent's 2001 Permit and Current Permit require through Standard Conditions to properly operate and maintain all facilities and control systems.

19. Respondent's 2001 Permit and Current Permit set effluent limitations at Outfall 001 for identified pollutants, including Copper and Ammonia Nitrogen. Flow from the STP is also limited and is required to be monitored daily.

20. On May 11 through 14, 2015, an EPA representative performed a Compliance Sampling Inspection and Sanitary Sewer Overflow Inspection (hereafter "the EPA inspection") of the City's POTW 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.

21. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, collected and reviewed the City's records related to the Permit, including Monthly Operating Reports ("MORs"), and Sanitary Sewer Overflow ("SSO") Checklist, records related to self-monitoring, preventative maintenance and cleaning, and observed the POTW, including visually inspecting manholes and lift stations, the industrial users, and the receiving stream to which Outfall 001 discharges. Additionally, the inspector collected internal and contractor laboratory reports.

22. On or about January 7, 2016, EPA sent a Request for Information Pursuant to Section 308 of the CWA to the City requesting a copy of each Monthly Monitoring Report submitted to the IDNR for the period June 1, 2011 through November 30, 2015.

23. The EPA inspector's observations and review of the information provided by the City at the time of the inspection and Information Request regarding the City's POTW for the period from May 2011 through November 2015 revealed, at a minimum, the following violations:

- a. discharges in violation of its Permit effluent limitations on at least 60 occasions;
- b. discharges in violation of its Permit flow design limitations on at least 17 occasions;
- c. during the Inspection the facility was not conducting appropriate quality controls or utilizing proper test procedures on some of the internal laboratory analyses; and
- d. Respondent has reported discharges of untreated wastewater to waters of the United States from locations within Respondent's POTW (hereinafter Sanitary Sewer Overflows or "SSOs").

24. At the conclusion of the Inspection, the EPA inspector provided the City a Notice of Potential NPDES Permit Violations (referred to as an "NOPV"), which described the inspector's preliminary observations regarding potential violations, including, but not limited to, effluent limit exceedances, sample collection and analysis deficiencies, SSOs, and operation and maintenance deficiencies.

25. By letter dated May 21, 2015, the City provided additional information to the EPA inspector regarding the matters identified in the NOPV. The City's letter indicated the sampling and analysis deficiencies in part had been corrected and the City was considering options to correct some of the other deficiencies.

Allegations of Violation of Section 301 Of The CWA

26. The facts stated in Paragraphs 9 through 25 above are herein incorporated.

27. The EPA finds that each of Respondent's violations described above, is a violation of the terms and conditions of its Permit issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Unpermitted Discharges

28. Respondent's 2001 Permit and Current Permit authorize Respondent to discharge pollutants only from a specified point source, identified in the NPDES Permits as "Outfall 001," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permits.

29. Within the past five (5) years, Respondent has discharged untreated wastewater from locations within the Respondent's POTW, also known as SSOs. None of the locations where the discharges occurred are numbered outfalls authorized to discharge in Respondent's NPDES permit.

30. Of these unauthorized discharge locations, at least one discharged untreated wastewater to Otter Creek. Otter Creek is a "navigable water" and "water of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation, 40 C.F.R. § 122.2.

31. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violations of Respondent's NPDES Permits

32. Respondent's 2001 Permit and Current Permit set effluent limitations at Outfall 001 for identified pollutants, including Copper and Ammonia Nitrogen. Flow from the wastewater treatment plant is also limited and is required to be monitored daily.

33. Based on observations and information documented during the EPA inspection, review of information provided by the City in response to the EPA's NOPV, information provided by the Information Request, and review of other information reportable by the City pursuant to its Permits, the EPA finds that the Respondent has violated the terms and conditions of its Permit, including, but not limited to, the following.

a) *Ammonia*: discharging effluent between March 2013 and March 2015 exceeding the daily maximum concentration limits 29 times; daily maximum mass limits 17 times; monthly average concentration limits 6 times; and monthly average mass limits 4 times;

b) *Copper*: discharging effluent between December 2011 and November 2015 exceeding the monthly average concentration limits twice and the daily maximum concentration limits 3 times; and

c) *Flow*: discharging effluent between May 2011 and July 2014 exceeding the average dry weather flow design limits 6 times; average wet weather flow design limits once; and maximum wet weather flow design limits 10 times.

34. Each discharge of pollutants in violation of the effluent limitations is a violation of the terms and conditions of its NPDES Permits 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).

CONSENT AGREEMENT

35. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

36. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

37. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

38. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

39. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent is on schedule to be in compliance with the Administrative Order for Compliance on Consent, Docket No. CWA-07-2016-0078.

40. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

41. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), identified in Appendix A, which is enclosed to and incorporated into this Consent Agreement and Final Order. The parties agree that performance of the SEP, set forth in Appendix A, is intended to secure significant environmental restoration and protection.

42. Respondent agrees that within ninety (90) days of the effective date of the Final Order, Respondent shall submit a Work Plan to EPA that describes the details and implementation of the SEP identified in Appendix A. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the estimated start date and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments within thirty (30) days of receipt. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA's comments within thirty (30) days after receipt of EPA's written comments. The Work Plan shall become a Final Work Plan upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than twenty-four (24) months from the effective date of the Final Order.

43. Respondent shall notify EPA in writing within two weeks after the completion of the SEP. Within sixty (60) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

- a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.
- b. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
- c. An itemized accounting of the costs incurred per project in performance of the SEP.

44. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Five Thousand Five Hundred and Twenty Dollars (\$5520). Payment of this civil penalty shall resolve all civil and administrative claims for all violations of CWA alleged in this document.

45. Respondent shall pay stipulated penalties in the following circumstances:

- a. Except as provided in subparagraphs (b) and (c) below, for a SEP, which has not been completed satisfactorily pursuant to the approved SEP Work Plan as described above and as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount of Three Thousand Six Hundred and Eighty Dollars (\$3680), along with interest accrued at the statutory rate.

- b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 80% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.
- c. If the SEP is satisfactorily completed, but the Respondent spent less than 80% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Appendix A and the amount expended in implementing the SEP.
- d. If no SEP is implemented and the penalty of Five Thousand Five Hundred and Twenty Dollars (\$5520) is not paid within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500) in addition to that which is due, along with interest accrued at the statutory rate.

46. Payment of the stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with the provisions of the Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by check, cashier's, or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

The check shall note the case title and the docket number. A copy of the check shall be sent to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

47. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other enforcement action or in compliance with state or local

requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

48. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to property not owned by Respondent that is the location of a SEP at all reasonable times to monitor Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

49. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this Consent Agreement and Final Order. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

50. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payment shall be by check, cashier's, or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

51. The Respondent shall reference the Docket Number CWA-07-2016-0078 and In the Matter of the City of West Union, Iowa on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Melissa Bagley
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

52. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

53. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

54. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

55. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This Consent Agreement and Final Order may be executed by EPA upon receipt from Respondent of a signature page. Upon its execution, a copy of the executed agreement shall be sent by U.S. mail to Respondent.

56. The effect of the settlement described above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized above.

57. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

58. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations.

59. This Consent Agreement and Final Order shall be effective upon filing of the Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

60. Respondent agrees that the original Consent Agreement and Final Order signed by Respondent shall be transmitted to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Upon the EPA's receipt of the signed original from Respondent and public notice in accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") by 40 C.F.R. Part 22, it shall be filed with the Regional Hearing Clerk.

61. The Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of the Consent Agreement and Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Melissa A.C. Bagley
Assistant Regional Counsel

Date

FOR RESPONDENT:
CITY OF WEST UNION, IOWA:

Kent Halverson
Name

8/12/16
Date

Mayor
Title

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective upon filing, pursuant to 40 C.F.R. § 22.31(b).

IT IS SO ORDERED.

APPENDIX A: SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Supplemental Environmental Project Description

The City of West Union will undertake a Supplemental Environmental Project referred to as the City Hall Parking Lot Improvements Phase I. The City will replace the current City Hall parking lot surface with permeable pavers installed at the parking stalls. The permeable pavers infiltrate water and direct it to the northeast corner of the parking lot. In the northeast corner, additional depth of storage aggregate would be included (≈ 5 ft.) to provide additional storage of storm water.

A six-inch diameter drain tile will be located within the storage area to direct flow to the drainage ditch which flows to nearby Otter Creek. The proposed project also includes construction of a rain garden on the northeast corner of City Hall that will collect and treat roof drainage. The rain garden will contain an underdrain that would flow into the storage aggregate of the permeable pavers.

It is anticipated that the installation of the permeable pavers and a rain garden will reduce stormwater runoff volume and reduce the pollutants introduced into Otter Creek from the City Hall parking lot.

Supplemental Environmental Project Location

The location of this project is at the West Union City Hall parking lot at 612 Highway 150 South.

Total Supplemental Environmental Project Cost

The City will spend at least \$122,000.

Schedule for Implementation of the Supplemental Environmental Project

The City shall spend at least \$122,000 to implement this SEP within two years of the effective date of this Order.