

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2018-0166
THE CITY OF WEST LIBERTY,)	
IOWA)	CONSENT AGREEMENT and
Respondent)	FINAL ORDER
)	
)	
Proceeding under Sections 309(g))	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

The U.S. Environmental Protection Agency, Region 7 (“EPA”) and the city of West Liberty, Iowa (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules”).

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that the Respondent violated terms of its National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Parties

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

4. Respondent owns and operates a Publicly Owned Treatment Works in West Liberty, Iowa.

I. Statutory and Regulatory Framework

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, 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 an NPDES permit issued pursuant to that Section.

6. 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.

7. 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.

8. 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.

9. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to assess civil penalties for violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

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

II. EPA Allegations

Allegations of Fact and Law

11. The city of West Liberty is a political subdivision of the state organized under the laws of Iowa, and as such is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all relevant times, the City owned and operated a wastewater treatment facility (“WWTF”) and its associated sewer collection and transmission systems, which receive and treat wastewater from residential, commercial, and industrial connections within West Liberty, Iowa, and which together are a POTW, as defined by 40 C.F.R. § 403.3(q).

13. The City’s WWTF discharges to Wapsinonoc Creek, which is a “navigable water” and a “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.

14. Effluent from the City's POTW is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. 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.

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

17. On July 9, 2009, EPA issued Respondent a Findings of Violation and Administrative Compliance Order for violations of the CWA, including Sanitary Sewer Overflows ("SSOs"), exceedances of Respondent's NPDES permitted flow, Total Suspended Solids and Ammonia Nitrogen limits, and unauthorized bypasses. The Order was terminated by EPA on November 9, 2012.

18. On October 2, 1991, IDNR issued an NPDES Permit to the city of West Liberty for discharges from the WWTF to Wapsinoc Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. IDNR administratively extended the permit in 1996. On September 1, 2013, IDNR re-issued NPDES Permit No. IA0031691 (hereafter "NPDES Permit") to the City and it will expire on August 31, 2018.

19. On January 9 - 11, 2017, an EPA representative performed an SSO Inspection (hereafter "the EPA inspection") of the City's wastewater collection system 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.

20. During the EPA inspection, the inspector reviewed the City's records related to the wastewater collection system, conducted a visual inspection of eight City lift stations, and completed an SSO inspection checklist. The EPA inspector's observations regarding the City's wastewater collection system included, but were not limited to:

a. It appeared that a number of SSOs and bypasses of partially treated wastewater at the wastewater treatment plant had occurred over the previous five years;

b. The City had failed to properly maintain and operate the collection system in accordance with the requirements of the NPDES Permit;

c. City personnel were not adequately documenting field observations to assist in identifying causes of and preventing further instances of sewer backups and SSOs; and

d. The City did not report all SSOs to IDNR as required by the City's NPDES Permit.

21. On or about March 7, 2017, EPA issued the City an information request pursuant to Section 308 of the CWA. On or about April 18, 2017, the City responded to such request.

22. On or about May 1, 2017, EPA requested and received from IDNR copies of the electronic monthly monitoring reports ("MMRs") filed by the City covering the reporting periods from September 2013 through February 2017.

Allegations of Violation

Unpermitted Discharges

23. Respondent's NPDES Permit authorizes the discharge of pollutants only from a specified point source, identified in the NPDES Permit as "Outfall 001," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permit. Respondent's previous NPDES Permit contained the same Standard Condition concerning unauthorized discharges.

24. Within the past five years, the City has discharged untreated wastewater from overflows at manholes and/or from other locations within the City's collection system, also known as SSOs. None of the locations of these discharges are the permitted Outfall 001 identified in the NPDES Permits.

25. The City's unpermitted discharges from its collection system described above were reported to the IDNR as having occurred on at least April 17, 2013, June 30 and September 10, 2014, and on August 29, 2016, and may have occurred on other unreported dates.

26. Each discharge of pollutants from any location other than a permitted outfall, is a violation of the terms and conditions of a 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).

Unauthorized Bypasses

27. Standard Condition 23 of the City's NPDES Permit states that any bypass is prohibited unless: it is unavoidable to prevent loss of life, personal injury, or severe property damage; there are no feasible alternatives to the bypass; and notices are submitted as required by this section of the permit. Respondent's previous NPDES Permit contained the same Standard Condition concerning bypasses.

28. Within the past five years, the City has bypassed untreated or partially treated wastewater from the City's WWTF in violation of the Standard Condition 23 prohibition.

29. The City's unauthorized bypasses from the WWTF occurred on April 17-19, 2013, June 30-July 3, 2014 and September 9-11, 2014.

30. The unauthorized bypasses described in paragraphs 28 and 29 failed to comply with the City's NPDES permit effluent limitations for Outfall 001 and were reported to have discharged 18,880,000 gallons of untreated or partially treated wastewater into Wapsinoc Creek.

31. The City's failure to comply with the City's NPDES Permit effluent limitations as described above is a violation of the terms and conditions of a 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. § 1342(a).

Exceedances of WWTF Design Capacity

32. The Design Capacity section of the City's NPDES Permit states that wastes in such volumes or quantities as to exceed the design capacity of the treatment works or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of the treatment works and are prohibited.

33. The Design Capacity section of the City's NPDES Permit further states the treatment plant is designed to treat an average dry weather ("ADW") flow of 1.3800 Million Gallons per Day ("MGD"), an average wet weather ("AWW") flow of 2.2100 MGD and a maximum wet weather ("MWW") flow of 4.6100 MGD.

34. The City exceeded the maximum wet weather flow of 4.6100 MGD on September 10, 2014.

35. The City's failure to comply with the design capacity requirements of the City's NPDES permit as described above is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Failure to Comply with Effluent Limitations

36. The Effluent Limitations section of the City's NPDES Permit establishes effluent limitations for Outfall 001, including the following:

- a. Five Day Carbonaceous Biochemical Oxygen Demand ("CBOD5") – 7-day average concentration of 40 milligrams per liter (mg/L), 30-day average concentration of 25 mg/L, 7-day average of 737.26 pounds per day (lbs/day) mass and 30-day average of 460.79 lbs/day mass;

b. Total Suspended Solids (“TSS”) - 7-day average concentration of 45 mg/L, 30-day average concentration of 30 mg/L, 7-day average of 829.41 lbs/day mass and 30-day average of 552.94 lbs/day mass; and

c. Ammonia Nitrogen – daily maximum concentration of 6.8 to 16.1 mg/L varying by month, 30-day average concentration of 1.4 to 7.9 mg/L varying by month, daily maximum mass of 106.9 to 295.3 lbs/day varying by month and 30-day average mass of 22.7 to 131.4 lbs/day varying by month.

Respondent’s previous NPDES Permit contained the same effluent limits.

37. A review of the City’s response to EPA’s March 7, 2017 CWA Section 308 Request for Information showed that the City discharged CBOD5 in excess of the permitted 7-day average mass during the 7-day period ending April 21, 2013.

38. A review of the City’s response to EPA’s March 7, 2017 CWA Section 308 Request for Information showed that the City discharged TSS in excess of the permitted 7-day average mass during the 7-day periods ending April 21, 2013, June 30, 2014 and September 14, 2014.

39. A review of the electronic MMRs showed that the City discharged Ammonia Nitrogen in excess of the permitted daily maximum concentrations and masses on July 22 and 23, 2015, and in excess of the permitted 30-day averages for concentration and mass for the month of July 2015.

40. The City’s failure to comply with the City’s NPDES Permit effluent limitations as described above is a violation of the terms and conditions of a 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. § 1342(a).

Failure to Correctly Monitor and Report

41. The Monitoring and Reporting Requirements section of the City’s NPDES Permit stipulates (a) the frequency, method and location of sample collection and flow monitoring, (b) that the City is required to report all data including calculated results needed to determine compliance with the limitations contained in the permit, and (c) that results of all monitoring shall be recorded on forms provided by and submitted to the IDNR by the fifteenth day following the close of the reporting period.

42. Standard Condition 2 of the City’s NPDES Permit states 7-day average means the sum of the total daily discharges by mass, volume or concentration during a 7-consecutive day period, divided by the total number of days during the period that measurements were made. Four 7-consecutive day periods shall be used each month to calculate the 7-day average. The first 7-day period shall begin with the first day of the month.

43. Standard Conditions 13 and 14 of the City's ND PES require reporting for any noncompliance that may endanger human health or the environment including oral reporting within 24-hours of becoming aware of the noncompliance, a written submission within five days and reporting at the time of monitoring reports submittal for instances of noncompliance not otherwise reported.

44. A review of the electronic MMRs reveal that the City failed to monitor and report both concentration and mass of CBOD5, TSS and Ammonia Nitrogen for the first 7-day period in March 2017 on the monthly monitoring reports submitted to the IDNR.

45. A review of the electronic MMRs reveal that the City failed to report bypasses from the Storm Water Detention Basin on the monthly monitoring reports submitted to the IDNR for June, July and September 2014, November 2015 and August 2016.

46. The City failed to submit five day written reports of SSOs for which 24-hour oral notifications were made and failed to report them with the monthly monitoring reports for June and September 2014 and August 2016.

47. The City's failure to comply with the monitoring and reporting requirements of the City's ND PES permit as described above is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

CONSENT AGREEMENT

48. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

49. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

50. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

51. Respondent and Complainant each agree to bear their own costs and attorney's fees.

52. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

53. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

54. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is scheduled to be in compliance with the terms of EPA's Findings of Violation and Administrative Order for Compliance on Consent, Docket No. CWA-07-2017-0208.

55. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 54 above, of this CA/FO.

Supplemental Environmental Project

56. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), which involves the purchasing and installation of a high efficiency pump at the Terrace Ridge Lift Station. Respondent estimates the project will cost approximately \$15,000.

57. On January 3, 2018, EPA Region 7 approved Respondent's SEP Plan. Respondent shall complete the SEP Plan within six (6) months of the effective date of this CA/FO.

58. Respondent shall notify EPA in writing within one week 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 Final SEP 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.

59. 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 Plan as described above and as approved by EPA, Respondent shall pay a stipulated penalty to the United States in the amount of Four Thousand Five Hundred Dollars (\$4,500), 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 the approved SEP Plan and the amount expended in implementing the SEP, not to exceed \$1,800.

60. 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 this 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 Chris Muehlberger, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

61. 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.

62. 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.

PENALTY

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), that:

63. Respondent shall pay a civil penalty of Two Thousand Seven Hundred Dollars (\$2,700). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

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

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and

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

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

64. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Reservation of Rights

65. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

66. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

Parties Bound

67. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

Effective Date

68. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

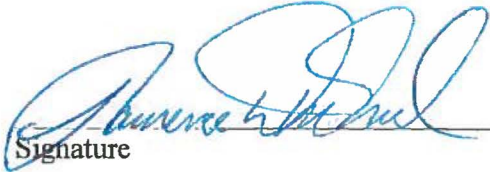
For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this _____ day of _____, 2018.

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7

Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of West Liberty, Iowa:


Signature

2/20/18
Date

Lawrence McNaul
Name

City Manager
Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Consent Agreement and Final Order by certified mail, return receipt requested, to:

The Honorable Robert Hartman
Mayor of West Liberty, Iowa
City Hall, 409 N. Calhoun Street
West Liberty, Iowa 52776

and

Charles R. Coulter, Esq.
Stanley, Land & Hunter
301 Iowa Avenue, Suite 400
Muscatine, IA 52761.

Date