

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
The City of Osceola, Iowa	)	Docket No. CWA-07-2016-0013
	)	
	)	
Respondent.	)	CONSENT AGREEMENT/ FINAL ORDER
	)	
Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)	)	
	)	
	)	

The United States Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and the City of Osceola, Iowa (“City” or “Respondent”) have agreed to a settlement of this action before the filing of a complaint, and 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). This is a “Class I” penalty action pursuant to Section 309(g)(1)(B) of the CWA, 33 U.S.C. 1319(g)(1)(B). This Consent Agreement and Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

**A. ALLEGATIONS**

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as 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 and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (“CA/FO”) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

### Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

4. Respondent is the City of Osceola, Iowa, a municipality organized pursuant to the state of Iowa.

### Statutory and Regulatory Framework

5. 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 in accordance with the terms of a 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. The Iowa Department of Natural Resources (“IDNR”) is the state agency within the State of Iowa that has been authorized by EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. EPA has notified IDNR of this enforcement action and CAFO.

### FACTUAL ALLEGATIONS

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

9. At all times relevant, Respondent was, and still is, the owner and/or operator of a Publicly Owned Treatment Works (“POTW”) in Clarke County, Iowa, that includes a wastewater treatment plant (“WWTP”) and sewage collection system, which receive wastewater from various domestic and non-domestic sources. As defined by 40 C.F.R. § 403.3(q), a POTW includes but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

10. The POTW discharges to White Breast Creek in Clarke County, Iowa, and thereafter to the Des Moines River. White Breast Creek and the Des Moines River are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2, and 33 C.F.R. Part 328. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, *inter alia*, waters

which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce (hereinafter “traditional navigable waters”) and tributaries of such waters. 40 C.F.R. § 122.2.

11. White Breast Creek and the Des Moines River each have a bed, banks, and an ordinary high water mark and have been identified as perennial streams by the U.S. Geological Survey. White Breast Creek is a tributary of the traditionally navigable Des Moines River, and both are a water of the United States, as defined in 40 C.F.R. § 122.2.

12. The City’s POTW is a “point source” that “discharges pollutants” to “navigable water” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

13. On or about April 28, 2003, IDNR issued the City NPDES Permit No. IA-2038002 which expired on April 27, 2008, and was administratively extended (“2003 Permit”).

14. On September 8-14, 2014, EPA performed a sampling inspection of the City’s wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter “EPA’s inspection”). Sampling documented unauthorized discharges from an unpermitted outfall. The EPA inspector’s review of the POTW’s monitoring records documents non-compliance with the Current Permit’s numeric limits for Carbonaceous Biological Oxygen Demand (CBOD), Ammonia (NH<sub>3</sub>), and Total Suspended Solids (TSS). EPA’s inspector also documented the violations of monitoring requirements, failure to properly implement its Pretreatment program, and 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>) loading exceedances of the design capacity of the POTW.

15. At the conclusion of EPA’s inspection, a Notice of Potential Violation (NOPV) was issued to the City. IDNR has public noticed a revised permit for the WWTP that will require an upgrade to the WWTP.

## **ALLEGED VIOLATIONS**

### **Count 1**

#### **Effluent Limit Violations**

16. The facts stated in Paragraphs A.1 through 15 above are hereby incorporated by reference.

17. Based on EPA’s review of relevant information, including copies of Monthly Operating Reports (“MORs”) submitted by the City to the IDNR pursuant to the Current Permit, EPA has determined that the City violated the effluent limitations in the 2003 Permit for discharges from Outfall 001, as identified in Attachment A to this Consent Agreement and Final Order. These violations include exceedances of the 2003 Permit’s limits for TSS, Nitrogen (N) and CBOD that occurred between April 2012 and January 2015.

18. Respondent's violations of the 2003 Permit, as described in Paragraph 17, above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Count 2

**Violations of Monitoring Requirements**

19. The facts stated in Paragraphs A.1 through 15 above are hereby incorporated by reference.

20. The "Monitoring and Reporting Requirements" Section of the 2003 Permit states that "Analytical and sampling methods specified in 40 CFR Part 136 or other methods approved in writing by the department shall be utilized." The inspection documented that since at least 2013, the City was violating the monitoring requirements of the 2003 Permit as follows:

- a. dilution water quality control checks for CBOD tests exceeded the minimum depletion allowance of 0.2 mg/l;
- b. nitrification inhibitor was improperly added to the blank water quality check;
- c. failure to properly follow the required test procedure for TSS analysis (drying temperature, sample control procedures); and
- d. failure to follow the required test procedure for ammonia (as Nitrogen)

21. Respondent's violations of the 2003 Permit, as described in Paragraph 20, above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Count 3

**Operation above Design Capacity**

22. The facts stated in Paragraphs A.1 through 15 above are hereby incorporated by reference.

23. The "Design Capacity" Section of the 2003 Permit states "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 by rule IAC 567-62.1(7)." The WWTP's average daily design flow is documented as 1.065 million gallons per day (MGD), and the BOD design loading is documented as 4,063 pounds per day (lbs/day). Based on EPA's review of relevant information the BOD loadings received by the WWTP exceeded the design capacity of the WWTP during ten months of 2013 (except June and July 2013), January through July 2014, October 2014 through March 2015, and May through July 2015 in violation of this requirement.

24. Respondent's violations of the 2003 Permit, as described in Paragraph 23, above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Count 4

**Collection System Operation and Maintenance Violations**

25. The facts stated in Paragraphs A.1 through 15 above are hereby incorporated by reference.

26. The “Standard Conditions, Proper Operation and Maintenance” section of the 2003 Permit requires “All facilities and control systems shall be operated as efficiently as possible and maintained in good working order.” At the time of EPA’s inspection, Outfall 004 was continuously discharging into the receiving stream due to an inoperable or out of service shut-off valve, in violation of this requirement.

27. During the EPA’s inspection a significant rainfall event occurred, and EPA’s inspector observed violations of the requirements described in Paragraph 26, above, as follows:

- a. discharge overflows from a manhole just prior to the treatment works that continued for nearly four hours and discharged into White Breast Creek.
- b. discharges from an overflow at the old wastewater plant lift station clarification unit for approximately six and a half hours into a small nearby intermittent tributary connected to White Breast Creek.

28. Respondent’s violations of the 2003 Permit, as described in Paragraph 27, above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342

Count 5

**Incomplete Implementation of the Pretreatment Program**

29. The facts stated in Paragraphs A.1 through 15 above are hereby incorporated by reference.

30. The “Major Contributing Industries” Section of the 2003 Permit states that the City must “limit and monitor pollutants for each major contributing industry as required elsewhere in this permit,…” Based on EPA’s review of relevant information the City violated the Pretreatment requirements of the Current Permit as follows:

- a. Between 2013 and 2014 the Wayne Ringgold Decatur Solid Waste Commission (Commission) did not performed their required annual monitoring of their leachate discharges to the City. The Commission had not performed their annual monitoring requirements in violation of their City treatment agreement. At the time of the EPA inspection, the City was not monitoring the Commission to detect a violation of their permit.

- b. Between 2013 and 2014 Clarke County Sanitary Landfill (Landfill) did not perform a metals evaluation when they attempted to fulfill their annual monitoring requirements. The missing parameters violated their City treatment agreement. At the time of the EPA inspection, the City was not monitoring the Landfill to detect a violation of their permit.

31. Respondent's violations of the 2003 Permit, as described in Paragraph 30, above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

## **B. CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.
2. 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 portion of this CA/FO.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.
4. 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 portion of this CA/FO.
5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.
7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. This CA/FO addresses all civil and administrative claims for CWA violations during the Period of Violation that are specifically alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.
9. Respondent and EPA have entered into an Administrative Order for Compliance on Consent ("Order", EPA Docket No. CWA-07-2015-0106) which establishes compliance actions required by Respondent during the period that the WWTP is upgraded to comply with the new NPDES permit, when effective. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Facility is in compliance with the referenced Order.

10. The effect of the settlement described in Paragraph B.8 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph B.9 of this CA/FO.

11. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), identified in Attachment B to this Order, which is enclosed to and incorporated into this CA/FO. The parties agree that performance of the SEP, set forth in Attachment B, is intended to secure significant environmental restoration and protection by minimizing erosion and sedimentation within the tributary flowing into White Breast Creek.

12. Respondent agrees that within thirty (30) 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 Attachment B. 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 eighteen (18) months from the effective date of the Final Order.

13. Respondent shall notify EPA in writing within two weeks after the completion of the SEP. Within thirty (30) 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.

14. 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 Six Thousand Dollars (\$6,000), 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 (80% of \$20,000, or \$16,000) 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 Attachment B and the amount expended in implementing the SEP.

15. Payment of the stipulated penalties as specified in Paragraph B.14 above shall be immediately due and payable upon notice by EPA to Respondent, and shall be made in accordance with the Payment Procedures specified in Paragraphs B.20 and B.21, below.

16. 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.

17. 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.

18. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$8,400, as set forth in Paragraphs B.20 and B.21, below.

19. Respondent understands that failure to pay any portion of the mitigated civil penalty or stipulated penalties on the proper due dates may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

#### Payment Procedures

20. Respondent shall pay a mitigated civil penalty of Eight Thousand, Four Hundred Dollars (\$8,400) within thirty (30) days of the effective date of the Final Order.

21. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:



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

This payment shall reference docket number CWA-07-2016-0013.

Copies of the check shall be mailed to:

Howard Bunch  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to

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

22. 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.

#### Parties Bound

23. The Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors, 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 this CA/FO.

#### General Provisions

24. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to 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.

25. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

26. The Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

27. Respondent and Complainant shall bear their respective costs and attorney's fees.

28. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

29. Respondent and Complainant agree that this CA/FO can be signed in part and counterpart.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Howard C. Bunch  
Sr. Assistant Regional Counsel  
Office of Regional Counsel

RESPONDENT:

CITY OF OSCEOLA, IOWA

2-24-16  
Date

  
\_\_\_\_\_

Name (Print) Ty Wheeler

Title City Administrator

**C. 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

\_\_\_\_\_  
Karina Boromeo  
Regional Judicial Officer

Attachment A:

<u>Date</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Concentration</u>	<u>Permit Limit</u>	<u>Monitored Exceedance</u>
April 2012	Solids, total suspended	001	7 Day Average	45	47.00
May 2012	Nitrogen, ammonia total [as N]	001	Monthly Average	9.6	9.66
July 2012	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	41.00
July 2012	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	26.56
September 2012	Solids, total suspended	001	Monthly Average	30	34.00
September 2012	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	32.17
October 2012	Solids, total suspended	001	7 Day Average	45	58.50
October 2012	Solids, total suspended	001	Monthly Average	30	33.47
October 2012	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	68.50
February 2013	Solids, total suspended	001	Monthly Average	30	34.63
April 2013	Solids, total suspended	001	7 Day Average	45	65.50
April 2013	Solids, total suspended	001	Monthly Average	30	40.00
May 2013	Solids, total suspended	001	Monthly Average	30	33.78
October 2013	Solids, total suspended	001	Monthly Average	30	30.10
November 2013	Solids, total suspended	001	Monthly Average	30	39.50
November 2013	Solids, total suspended	001	7 Day Average	45	52.50
November 2013	Nitrogen, ammonia total [as N]	001	Monthly Average	10	11.55
November 2013	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	59.00

November 2013	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	33.50
December 2013	Nitrogen, ammonia total [as N]	001	Monthly Average	11	14.37
February 2014	Solids, total suspended	001	Monthly Average	30	30.50
February 2014	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	26.57
March 2014	Solids, total suspended	001	Monthly Average	30	35.78
March 2014	Nitrogen, ammonia total [as N]	001	Monthly Average	13	17.17
March 2014	Nitrogen, ammonia total [as N]	001	Daily Maximum	25	25.48
March 2014	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	39.43
March 2014	BOD, carbonaceous, 05 day, 20 C	001	7 Day Average	40	51.50
April 2014	Solids, total suspended	001	7 Day Average	45	47.33
April 2014	Solids, total suspended	001	Monthly Average	30	37.62
April 2014	Nitrogen, ammonia total [as N]	001	Monthly Average	10	12.88
November 2014	Nitrogen, ammonia total [as N]	001	Monthly Average	10	12.71
November 2014	Nitrogen, ammonia total [as N]	001	7 Day Average	18	18.48
December 2014	Nitrogen, ammonia total [as N]	001	Monthly Average	11	11.06
January 2015	BOD, carbonaceous, 05 day, 20 C	001	Monthly Average	25	26.5

**Attachment B:  
Supplemental Environmental Project**

Respondent has proposed to implement a bank stabilization project in the tributary that flows into White Breast Creek, in accordance with the design drawings attached hereto.

The Estimated cost and required expenditures for the project is \$20,000.

The time period for completion of the project is no more than 18 months.

The environmental benefit of this project is to reduce and prevent erosion of the banks of the tributary, preventing and reducing sediment from entering downstream waters.

Respondent shall obtain all required permits and authorization for the construction of the SEP, including any permits necessary under Section 404 of the Clean Water Act, 33 U.S.C. § 1344.