

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	Docket No. CWA-07-2016-0082
	)	
CITY OF BLOOMFIELD, IOWA,	)	
	)	
Respondent	)	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 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 U.S. Environmental Protection Agency's (EPA) 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 of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated 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, 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 the EPA. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondent is the City of Bloomfield, Iowa (hereafter “Respondent” or “the City”), a political subdivision of the State of Iowa and a “municipality” within the meaning of Section 502(4) of the CWA, 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

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. 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.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial and municipal waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 122.2, and which include tributaries to waters of the United States.

11. Section 402 of the CWA, 33 U.S.C. § 1342, 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.

12. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

13. 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.

14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

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

16. 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 water.

17. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial, and industrial processes. The POTW includes a wastewater collection system, various pump stations and a three-cell wastewater treatment lagoon consisting of two aerated cells operated in series followed by one facultative cell, located at 703 South East Street in Bloomfield, Iowa in Section 30, Township 69 North, Range 13 West.

18. The City’s POTW discharges into Dry Run, a tributary to the Fox River, which is a “navigable water” and “water of the United States” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362 (7), and its implementing regulation at 40 C.F.R. § 122.2.

19. 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).

20. Respondent’s POTW is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C., § 1362.

21. 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.

22. The IDNR issued NPDES Permit No. IA-0047929 (Permit) to the City for discharges from its POTW to Dry Run. The Permit became effective December 22, 1997, with an expiration date of December 22, 2002. The City filed a timely application for reissuance of NPDES Permit No. IA-0047929, which has been administratively extended by IDNR pursuant to the Iowa Administrative Code, Chapter 567-64.8(455B).

23. On June 22 – 25, 2015, an EPA representative performed a Compliance Sampling Inspection (hereafter “EPA inspection”) of the City’s wastewater treatment facility 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.

24. During the EPA inspection, the inspector collected wastewater samples from the treatment facility influent and Outfall 001 effluent, reviewed the City’s records related to the

NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations regarding the City's POTW for the period from January 2012 through the date of the EPA inspection included, but were not limited to:

- a. Discharges of effluent in violation of its NPDES permit limitations on numerous occasions;
- b. Failure to provide accurate effluent concentrations on the Monthly Operation Reports (MORs);
- c. Influent flow in excess of the treatment facility design capacity;
- d. Improper sample collection and maintenance of monitoring and equipment calibration records; and
- e. Unauthorized discharges from point source locations other than those identified in the City's Permit.

25. On or about November 16, 2015, EPA issued the City an Information Request pursuant to Section 308 of the CWA. On or about December 3, 2015, the City responded to such request.

### **ALLEGATIONS**

26. The facts stated in Paragraphs 15-25 above are herein incorporated.

#### **Count 1**

#### **Failure to Comply with Effluent Limitations**

27. The Effluent Limitations and Monitoring Requirements section of the City's NPDES permit establishes effluent limitations for Outfall 001, including the following:

- a. pH – maintained at or above 6.0000 and below 9.0000 pH units; and
- b. Ammonia as N – daily maximum mass of 2.40 to 5.70 lbs/cfs/day and monthly average mass of 1.60 to 3.80 lbs/cfs/day varying by month.

28. The EPA inspection, review of the City's monthly monitoring reports submitted to IDNR, review of the City's contract laboratory reports and review of the City's responses to the Section 308 Information Request identified that between January 1, 2012 and October 31, 2015, the City violated the effluent limitations of its NPDES permit 50 times as follows:

- a. The City exceeded the daily maximum pH limit of 9.0000 SUs 34 times between July 2, 2012 and October 28, 2015;
- b. The City exceeded the permitted maximum daily ammonia mass limit of 2.40 lbs/cfs/day 12 times between March 14, 2012 and April 23, 2014 and the daily ammonia mass limit of 5.70 lbs/cfs/day on February 18, 2015; and
- c. The City exceeded the permitted monthly average ammonia mass limit in March 2012, March 2013 and April 2015.

29. 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. § 1311(a).

**Count 2  
Failure to Correctly Report Monitoring Data**

30. The Monitoring and Reporting Requirements section of the City's NPDES permit stipulates (a) the frequency, method and location of sample collection, (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.

31. Standard Condition 23 of the City's NPDES permit stipulates that analyses of the wastewater samples required to be submitted to IDNR be performed by a laboratory certified by the State of Iowa.

32. The EPA inspection, review of the City's monthly monitoring reports submitted to IDNR, review of the City's contract laboratory reports and review of the City's responses to the Section 308 Information Request identified the City incorrectly reported or failed to report data from laboratory reports of analyses of wastewater samples and failed to monitor and report at the required frequency on the MORs submitted to IDNR a total of 159 times between January 2012 and October 2015, as follows:

- a. Effluent CBOD<sub>5</sub> concentrations reported on the MORs for samples collected on September 11, 2012, April 24, July 30, July 31 and August 27, 2013, May 14, 2014, and March 31, 2015 were different than the concentrations reported on the laboratory reports for those samples;
- b. Effluent TSS concentrations reported on the MORs for samples collected on July 17 and September 11, 2012, June 12 and August 27, 2013, and February 17, 2015 were different than the concentrations reported on the laboratory reports for those samples;
- c. Effluent TSS concentrations were not reported on the MORs for samples collected and reported on the laboratory reports for November 20 and December 4, 12, 19 and 27, 2012; February 27, March 14 and 19, April 24, June 5 and 11, July 17 and 31, August 7 and December 11, 2013; January 15, February 18 and 26, March 5, 12, 19 and 26, April 16, May 21, June 25, July 9, 23 and 30, August 5 and 20, October 1 and 29, and December 10, 17 and 22, 2014; and January 21, February 11, March 4, 18 and 25, April 1, 15 and 29, May 27, August 5 and 26, September 2, and October 14 and 28, 2015;
- d. Effluent TSS concentrations were neither monitored nor reported on the MOR for February 2013 at the required frequency;



- e. Effluent Ammonia as N mass values reported on the MORs for nine samples collected in January and three in February 2012; two samples in January, six in February, eight in March and nine in April, 2013; two samples in January, eight in February, seven in March, six in April and five in December 2014; and eight samples in January, eight in February, nine in March, two in April, four in May and one in August 2015 were different from the mass values calculated from the laboratory report concentrations and the reported receiving stream flow for those sample dates; and
- f. Effluent Ammonia as N mass values were neither monitored nor reported on the MOR for April 2014 at the required frequency.

33. The City's failure to properly report effluent concentrations 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. § 1311(a).

### **Count 3 Unpermitted Discharges**

34. The City's NPDES permit authorizes discharges from Outfall 001 – Discharge from a Three Cell Aerated Lagoon, and prohibits discharge of pollutants except in compliance with the effluent limits listed for Outfall 001.

35. The EPA inspection, review of the City's monthly monitoring reports submitted to IDNR and review of the City's responses to the Section 308 Information Request demonstrate that the City discharged pollutants at locations other than Outfall 001 a total of 68 times between May 25, 2011 and November 27, 2015.

36. The City's discharge of pollutants at locations other than the permitted Outfall 001 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. § 1311(a).

### **CONSENT AGREEMENT**

37. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

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

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

40. Respondent waives any right to contest the allegations set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.

41. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

42. Nothing contained in this Consent Agreement/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, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

44. Respondent has consented to an Administrative Order for Compliance, CWA-07-2016-0081 and certifies that it is in compliance with the terms of the Order.

45. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in this Consent Agreement/Final Order.

46. Respondent consents to the issuance of the Final Order hereinafter recited and agrees to pay a mitigated civil penalty in the amount of Ten Thousand dollars (\$10,000).

47. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Allegations.

#### Reservation of Rights

48. EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

49. This Consent Agreement/Final Order addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this Consent Agreement/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 a civil penalty of Ten Thousand dollars (\$10,000) within thirty (30) calendar days of the effective date of this Final Order. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2016-0082 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and to:

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

51. 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. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

52. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

53. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

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

55. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.



COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Melissa Bagley  
Assistant Regional Counsel

\_\_\_\_\_  
Date

RESPONDENT:  
CITY OF BLOOMFIELD, IOWA

8/10/16  
Date

Chris Miller  
Name

Chris Miller  
Signature

Mayor  
Title

**FINAL ORDER**

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

IT IS SO ORDERED.

\_\_\_\_\_

Date: \_\_\_\_\_