UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

AUG 2 3 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article No.: 7014 1200 0000 6128 1964

The Honorable Ed Malloy
Mayor of Fairfield
118 South Main Street
Fairfield, Iowa 52556

Re: Notice of Findings of Violation and Order for Compliance on Consent
Docket No. CWA-07-2017-0139

Dear Mayor Malloy:

Enclosed please find a copy of the original Findings of Violation and Order for Compliance on Consent for your records. The Order was signed by the EPA on August 22, 2017 (Effective Date) and filed with the Regional Hearing Clerk. Thank you for your efforts and the steps you are taking to bring your facility into compliance and resolve this matter.

Please be sure to review the enclosed Order and note the specific requirements and deadlines. Should you have any questions regarding the enclosed Order, please feel free to contact myself at (913) 551-7955 or *mccoin.shane@epa.gov*, or Wayne Dillard at (913) 551-7885 or *dillard.wayne@epa.gov*.

Sincerely,

Shane E.C. McCoin

Shane E.C. McCoin
Assistant Regional Counsel

Enclosure

Printed on Recycled Paper

EPA
8/14/17

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2017-0139
THE CITY OF FAIRFIELD, IOWA	)	
	)	FINDINGS OF VIOLATION AND
Respondent	)	ADMINISTRATIVE ORDER FOR
	)	COMPLIANCE ON CONSENT
	)	
Proceeding under Sections 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)	)	
	)	

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT ("Order") is issued by the United States Environmental Protection Agency ("EPA") to the city of Fairfield, Iowa ("City" or "Respondent"), pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director of Region 7's Water, Wetlands, and Pesticides Division.

2. The EPA, together with the City (collectively, "the Parties"), enter into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

3. It is the Parties' intent through this agreement to address discharges of pollutants by the City into the waters of the United States in violation of its National Pollutant Discharge Elimination System ("NPDES") permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

4. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with

respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

5. Respondent neither admits nor denies the factual allegations set forth in this Order.

II. Statutory and Regulatory Framework

6. 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.

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. 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.

9. 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.

10. 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.

11. 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 Agreement between the EPA and IDNR dated August 10, 1978, as amended. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

III. EPA Findings of Fact and Findings of Violation

Findings of Fact and Law

12. The city of Fairfield 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).

13. At all relevant times, the City has 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 Fairfield, Iowa, and which together are a POTW, as defined by 40 C.F.R. § 403.3(q).

14. The City's WWTF discharges to Crow 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.

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

16. 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.

17. 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.

18. On September 14, 1999, IDNR granted NPDES Permit No. IA0035076 (hereafter "NPDES Permit"), to the city of Fairfield for discharges from the WWTF to Crow Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The NPDES Permit had an expiration date of September 14, 2004. The City filed a timely application for reissuance of the NPDES Permit and it was administratively extended by IDNR.

19. On January 11 - 13, 2017, EPA representatives performed a Sanitary Sewer Overflow ("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 described in Paragraph 19 above, the inspectors reviewed the City's records related to the wastewater collection system, conducted a visual inspection of several of the City's lift stations, and completed a SSO inspection checklist.

Allegations of Violation

21. The facts stated in Paragraphs 12 through 20, above, are herein incorporated.

Unpermitted Discharges

22. 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.

23. Within the past five years, the City has discharged untreated wastewater from constructed 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 Outfall 001 identified in the NPDES Permit.

24. The City's unpermitted discharges from its collection and transmission system described above occurred at least 105 times between June 16, 2012, and November 18, 2016.

25. Each discharge of pollutants from any location other than a permitted outfall constitutes a violation of the conditions of the City's NPDES Permit and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

Unauthorized Bypasses

26. Standard Condition 21 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.

27. Within the past five years, the City has bypassed untreated or partially treated wastewater from the City's WWTF.

28. The City's unauthorized bypasses from the WWTF occurred on March 11, 2013 and May 28, 2013.

29. The unauthorized bypass on March 11, 2013 described in Paragraphs 27 and 28 was reported to have discharged more than 30,000 gallons of untreated or partially treated wastewater into Crow Creek. For the May 28, 2013 unauthorized bypass described in Paragraphs 27 and 28, the City failed to report the volume of untreated or partially treated wastewater discharged into Crow Creek.

30. Each discharge of pollutants from any location other than a permitted outfall constitutes a violation of the conditions of the City's NPDES Permit and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Order for Compliance

Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and Respondent hereby AGREES to take, the actions described below:

31. Consistent with EPA's findings set forth above, the City agrees to undertake necessary actions with the goal of eliminating and preventing recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES Permit by no later than December 31, 2032 ("Final Compliance Date") or the Final Compliance Date as

modified pursuant to Paragraph 33, below.

32. The City shall complete all actions necessary to identify and eliminate excess flows and/or increase conveyance and treatment capacity sufficient to prevent future unauthorized bypasses and discharges of partially or untreated wastewater, eliminate constructed overflows, and bring the wastewater system into compliance with the City's NPDES Permit as soon as possible. The City anticipates taking actions in accordance with the schedule set forth in Appendix A of this Order. The Parties recognize that the schedule and/or particular actions identified therein are subject to change as new information becomes available.

33. As soon as possible, but no later than December 31, 2020, the City shall complete the actions identified in Steps 1, 2, and Item 1 of Step 3 (the "Pre-Design Secondary Flow Monitoring Study") in the schedule set forth in Appendix A of this Order, and submit to the EPA, with a copy to the IDNR, an update to the schedule and a description of the work remaining to bring the wastewater system into compliance with the City's NPDES Permit. After review of the information submitted by the City in accordance with this Paragraph, the EPA may modify the Final Compliance Date stipulated in Paragraph 31 or terminate this Order.

34. As soon as possible, but no later than one (1) month following the Final Compliance Date, the City shall certify to the EPA that it has taken all measures necessary to achieve compliance with its NPDES Permit. Until that certification has been submitted, the City shall submit semi-annual reports in compliance with Paragraph 36, below, describing progress made toward achieving compliance. Concurrently with submittal to the EPA, the City shall post a copy of each semi-annual report on its web site, http://cityoffairfieldiowa.com/CivicAlerts.aspx.

35. All work to be performed by the City to comply with the terms of this Order shall be completed no later than the Final Compliance Date. If the City believes that despite its best efforts it will not be able to complete work necessary to address and eliminate unpermitted discharges as described in Paragraphs 23 and 27 above by the Final Compliance Date, the City may, as soon as it has credible knowledge anticipating such delay, submit a petition pursuant to Paragraph 49 of this Order to the EPA, with a copy to the IDNR, for an extension of time to complete such work. The request must be in writing and must describe the reason for the anticipated delay, the steps the City has taken to mitigate the cause(s) of the delay, and a date certain by which the City expects to complete the work.

Submissions

36. The City shall submit to the EPA, with a copy to the IDNR, reports on or before April 15 and October 15 of each year beginning October 15, 2017, describing the actions the City has taken during the six-month period ending the last day of the month prior to the report due date, to comply with the terms of this Order. The City's reports shall include, at a minimum:

a. A description of all work in progress or completed to address and eliminate unpermitted discharges as described in Paragraphs 23 and 27 above;

b. A description of any changes in expected completion dates of scheduled work required to address and eliminate unpermitted discharges, the causes of such changes, and actions taken or planned to return to schedule;

c. A description of all work scheduled for the next reporting period;

d. A complete description, including volume, cause, and waters impacted, of any unpermitted discharges and/or unauthorized bypasses occurring during the reporting period and specific measures taken by the City to correct and prevent recurrence of each such unpermitted discharge and/or unauthorized bypass; and

e. Either the Report ID assigned by IDNR to each unauthorized discharge report submitted during the reporting period or a copy of the respective unauthorized discharge report submitted to IDNR.

37. All submissions by the City to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

38. All documents, including certifications, required to be submitted to the EPA by this Order, shall be submitted by electronic mail to:

dillard.wayne@epa.gov

Wayne Dillard, P.E., or his successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph.

39. A copy of documents required to be submitted to the IDNR by this Order, shall be

submitted by mail to:

Jim Kacer, or his successor
Environmental Specialist
Iowa Department of Natural Resources
Field Office # 6
1023 West Madison Street
Washington, Iowa 52353

40. After review of the information submitted by the City pursuant to the above Paragraphs, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

General Provisions

Effect of Compliance with the Terms of this Order

41. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating, an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Section 309(g)(6) of the CWA, 33 U.S.C. § 1319(g)(6), addresses the effect of this Order on subsequent actions by the EPA or the State and with respect to citizen suits.

Reservation of Rights

42. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.

43. Failure to comply with the terms of the Order may result in Respondent's liability for statutory civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the Order.

44. Subject to the limitations of Paragraph 41, above, Respondent reserves the right to contest liability in any subsequent action filed by the EPA to seek penalties for violation of this Order, and reserves the right to contest liability in any subsequent action filed by the EPA for any violations alleged in the Findings, above.

45. With respect to matters not addressed in this Order, the 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/or other

legal remedies allowed by law.

Access and Requests for Information

46. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and/or any other authority.

Severability

47. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

48. This Order shall be effective upon signature of the EPA, Region 7 Director, Water, Wetlands and Pesticides Division. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Modification

49. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

50. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

Signatories

51. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

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

Issued this 22 day of August, 2017.

Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7

Shane E. C. McCoin
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Fairfield, Iowa:

Signature _____ Date 8/17/17

Ed Malloy
Name

Mayor
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class mail to:

The Honorable Ed Malloy
Mayor
City of Fairfield
118 South Main Street
Fairfield, Iowa 52556

and to:

Ted Petersen
Environmental Program Supervisor
Iowa Department of Natural Resources
Field Office # 5
7900 Hickman Rd, Suite 200
Windsor Heights, Iowa 50324-4432

8/23/17
Date

Shane McLain

APPENDIX A
SANITARY TRANSPORTATION AND ELIMINATION PROGRAM (STEP)
FAIRFIELD, IOWA

MILESTONE	COMPLETION DATE
STEP 1 – Trunk Sewer Improvements (Main Interceptor)	
1. Design and Bidding	August 2013 - April 2016
2. Land Acquisition/Easement Negotiations	September 2013 – April 2015
3. Construction	June 2016 – October 2017
4. Substantial Completion	April 2017
5. Final Completion	October 2017
STEP 1 – Wastewater Treatment Plant Improvements	
1. Design	2013 – December 2013
2. Land Acquisition/Easement Negotiations	September 2013 – December 2014
3. Bidding	February 2017
4. Contract Award	February 2017 – August 2017
5. Construction	July 2017 – October 2019
STEP 2A – Trunk Sewer Improvement (Golf Course)	
1. Preliminary Design/Environmental	August 2013 – July 2016
2. Final Design and Bidding	August 2016 – December 2016
3. Land Acquisition/Easement Negotiations	September 2016 – December 2016
4. Construction	January 2017 – October 2017
STEP 2B – Trunk Sewer Improvements (Lamson Woods)	
1. Preliminary Design	August 2013 – July 2016
2. Environmental	January 2016 – June 2018
3. Land Acquisition/Easement Negotiations	September 2017 – June 2018
4. Final Design and Bidding	August 2016 – July 2018
5. Construction	August 2018 – December 2019
STEP 3 – Greased Lightning Lift Station and Force Main Improvements	
1. Pre-Design Secondary Flow Monitoring Study	January 2019 – September 2019
2. Design	January 2021 – December 2021
3. Bidding	January 2022
4. Construction	March 2022 – December 2023

APPENDIX A
SANITARY TRANSPORTATION AND ELIMINATION PROGRAM (STEP)
FAIRFIELD, IOWA

MILESTONE	COMPLETION DATE
STEP 4 – Trunk Sewer Improvements (West Interceptor)	
1. Land Acquisition/Easement Negotiations	January 2024 – July 2025
2. Design	January 2025 – December 2025
3. Bidding	January 2026
4. Construction	March 2026 – December 2027
STEP 5 – Sanitary Sewer Rehabilitation	
1. Design	January 2029 – December 2030
2. Bidding	January 2030
	January 2031
3. Construction	March 2030 – December 2031
	March 2031 – December 2032