In the Matter of:
City of Muscatine
FINDINGS OF VIOLATION
and ORDER FOR COMPLIANCE ON CONSENT

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF THE CITY OF MUSCATINE IOWA Respondent Proceedings under Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)	Docket No. CWA-07-2007-0088 FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE ON CONSENT

Background and Findings of Violation

Jurisdiction

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE ON CONSENT (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3).

2. The EPA is alleging that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

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

4. Respondent, the City of Muscatine, Iowa (hereafter "Respondent" or "City "), operates a Publicly Owned Treatment Works ("POTW") in 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" 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 a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

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

7. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and EPA's implementing regulations. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

Findings of Fact

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

9. The City of Muscatine owns and operates a wastewater treatment facility (WWTF) and four combined sewer overflow outfalls (CSOs) from which it discharges pollutants, as defined by CWA Section 502(12), 33 U.S.C. § 1362(12), from "point sources" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

10. The City discharges pollutants from these point sources into Mad Creek and the Mississippi River, which are navigable waters under Section 502(7) of the Act, 33 U.S.C. 1362(7).

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

12. IDNR granted NPDES permit, EPA No. IA-0023434 (Permit), to the Respondent, effective January 23, 2003, and expiring January 22, 2008.

13. The Permit authorizes the City to discharge pollutants from the four CSOs to the Mississippi River and Mad Creek provided the City's discharges do not cause violations of State Water Quality Standards and the City submits a Long-Term Control Plan (LTCP) that includes a characterization of the combined sewer system, development and evaluation of CSO control alternatives and the selection and implementation of a long term control plan, which includes an implementation schedule, operational plan and post-construction compliance monitoring plan within 36 months of permit issuance. The permit was amended to extend the submittal deadline to April 21, 2006.

14. On April 17, 2006, the City submitted a "draft" LTCP to IDNR for review and comment. On February 27, 2007, EPA advised the City that the LTCP failed to include the

following: adequate system characterization, adequate evaluation of control alternatives, and selection and implementation of a long term control plan to address the City's CSO discharges.

15. By letter dated February 27, 2007, EPA advised the City to either (1) revise the LTCP, or (2) commit to separate its sewer and storm water systems.

16. The City has chosen to separate its sewer and storm water systems.

17. EPA finds that the failure of the City to submit a LTCP that meets the requirements set forth in its NPDES permit is in violation of the Permit, and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Agreement of the Parties Concerning Compliance Activities

18. Respondent and Complainant agree to pay their own costs and attorneys' fees incurred as a result of these action.

19. Without admitting the findings of facts stated herein or any conclusion of law which could be drawn from such facts, including without limitation, the alleged violation, Respondent consents to the issuance of the Order, hereinafter recited, and consents to perform the compliance activities as set forth in this Order.

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

21. Respondent does not contest the jurisdictional allegations set forth above.

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

23. Nothing contained in the Order shall alter or otherwise affect EPA's ability to initiate an administrative or judicial enforcement action to recover penalties for any violations of the CWA including the violations set forth above, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Order for Compliance on Consent

Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is ORDERED and Respondent agrees to take the actions described below:

1. Respondent shall:

a. By December 31, 2008, submit to EPA and IDNR a report describing the

projects needed to complete the separation of the Hershey Avenue combined sewer area as described in the Hershey Area Separation Plan included as Attachment 1. This report shall include a schedule and estimated cost for completing each project identified therein. The report shall describe the funding mechanism which the City intends to utilize to finance the projects, and shall also identify any contingency financing approaches that may be used.

b. By December 31, 2011, complete the separation of the combined sewers in the Hershey Avenue combined sewer area consistent with the Hershey Area Separation Plan.

c. By December 31, 2009, submit to EPA and IDNR a report identifying potential alternatives and total estimated costs for separating the remaining combined portions of the sewer system including the West Hill area. The report shall describe the funding mechanism which the City intends to utilize to finance the projects, and shall also identify any contingency financing approaches that may be used.

d. By December 31, 2010, submit to EPA and IDNR a report describing the projects needed to complete the separation of the remaining combined portions of the sewer system, including the West Hill area, as described in paragraph (c) above. This report shall include a schedule and estimated cost for completing each project identified therein, and an update on the City's plans for financing the projects.

e. By December 31, 2024, complete all projects described in paragraph (d) above.

f. The Parties acknowledge and agree that the completion dates set forth above in Paragraph 1.b and 1 e. are based upon all conditions known and information available as of the date of issuance of this Order. If during implementation of this Order, new information becomes available showing that the scope and complexity of the sewer separation work will be significantly different than originally anticipated, and that it will be technically impracticable to meet the completion dates despite use of best efforts by Respondent, then Respondent may request and EPA shall in good faith consider granting an extension of time to complete the separation work. Any such request by Respondent for an extension of time shall be in writing and shall set forth in detail the new information that is the basis for the extension, and the reasons that Respondent believes it is impracticable, despite the use of best efforts, to meet the original completion date. In any request for extension, Respondent shall also propose and justify an alternative completion date. Any extension of time that is agreed to by the parties shall be in writing pursuant to paragraph 8 herein.

g. The parties further acknowledge and agree that the separation of the

combined sewers by Respondent is not required to include the following: (1) removal of physical components of outfalls if they are otherwise controlled, and (2) separation of portions of sewer systems which discharge to the wastewater treatment facility for treatment prior to permitted discharge.

h. Beginning July 15, 2009 and each July 15 thereafter, through July 15, 2024 of each year, submit progress reports on combined sewer system separation projects to EPA and IDNR. The reports shall describe the work performed during the previous twelve month period and include a projection of the work to be performed during the next twelve month period.

Submissions

2. All documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Anthony Petruska
Water Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

3. A copy of documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Dennis Ostwinkle
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

4. Compliance with the terms of this Order shall not relieve Respondent of liability for the violations identified in this Order, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA including the violations set forth above, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

5. This Order does not constitute a waiver or a modification of any requirements of the

Clean Water Act, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information

6. 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

7. 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.

Modification

8. There shall be no material modification of this Order without written approval by Respondent and EPA. Respondent may request and EPA will consider a modification of this Order if subsequent to its issuance there is a significant change in the Clean Water Act or its implementing regulations and further implementation of the activities required by this Order would be contrary to such change. The parties may agree to modify the schedule for completion of all sewer separation work in accordance with Paragraph 1.f. of the Order.

Effective Date

9. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

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and ORDER FOR COMPLIANCE ON CONSENT

Issued this 4th day of September, 2007.

William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Elizabeth Huston
Assistant Regional Counsel

In the Matter of:
City of Muscatine
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FOR RESPONDENT:

CITY OF MUSCATINE:

Richard W. O'Brien
Name:

August 16, 2007
Date

Title:

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CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Honorable Richard O'Brien.
Mayor, City of Muscatine
215 Sycamore Street
Muscatine, IA 52761

Dennis Ostwinkle
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623

Date 9/5/07

Kathy Robinson