

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
**The City of Albia, Iowa** ) Docket No. CWA-07-2015-0068  
)  
Respondent )  
)  
Proceedings under ) COMPLAINT AND  
Section 309(g) of the Clean Water Act, ) CONSENT AGREEMENT/  
33 U.S.C. § 1319(g) ) FINAL ORDER  
\_\_\_\_\_ )

**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 United States 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. Complainant, the United States Environmental Protection Agency, Region 7 and Respondent, the city of Albia, Iowa 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) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the 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**

4. 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 ("Complainant").

5. Respondent is the city of Albia, Iowa (hereafter, “City” or “Respondent”), a municipality organized under the laws of the state of Iowa and authorized to conduct business in the state of Iowa.

### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollution Discharge Elimination System permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

8. The Iowa Department of Natural Resources (“IDNR”) is the 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 states for violations of the CWA.

### **EPA’s General Allegations**

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

10. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources. The POTW includes a wastewater collection system, various pump stations and a three-cell aerated lagoon wastewater treatment facility, which is located off State Highway 137 on the northern outskirts of the City of Albia, Iowa in Section 15, Township 72 North, Range 17 West.

11. The City’s POTW discharges to an unnamed tributary to Miller Creek, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

12. The City’s POTW is a “point source” that “discharges pollutants” into “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

13. 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.

14. The IDNR issued NPDES Permit No. IA-0036871 to the City for discharges from its POTW to Miller Creek. The permit became effective February 24, 2004, with an expiration date

of February 23, 2009. The City filed a timely application for reissuance of NPDES Permit No. IA-0036871, which has been administratively extended.

15. On June 16 – 19, 2014, 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.

16. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, 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 2009 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. Inconsistent transfer of data from the contract laboratory reports to the Monthly Operation Reports (“MORs”);and
- c. Potential organic and hydraulic overload due to receipt of flow in excess of the treatment facility design capacity.

17. By letter dated November 24, 2014, the EPA sent to the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, which the City received on or about December 1, 2014.

18. By letters dated December 12, 2014, January 12, 2015 and February 10, 2015, the City responded to EPA’s Request for Information.

**EPA's Specific Allegations**

19. The facts stated in Paragraphs 1 through 18, above, are herein incorporated.

**Count 1  
Failure to Comply with Effluent Limitations**

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

- a. CBOD<sub>5</sub> – weekly average concentration of 40.0 mg/L and mass of 273.0 lbs/day, monthly average concentration of 25.0 mg/L and mass of 170.0 lbs/day and removal efficiency of 85%;
- b. TSS – weekly average concentration of 120.0 mg/L and mass of 818.0 lbs/day, monthly average concentration of 80.0 mg/L and mass of 546.0 lbs/day;
- c. pH – maintained at or above 6.0 and below 9.0 pH units; and
- d. Ammonia as N – daily maximum concentration of 11.0 to 70.0 mg/L and mass of 75.0 to 479.0 lbs/day varying by month, monthly average concentration of 11.0 to 30.0 mg/L and mass of 75.0 to 202.0 lbs/day varying by month.

21. The EPA inspection, review of the City's monthly monitoring reports submitted to IDNR and review of the City's response to the Request for Information revealed that between February 2011 and November 2014, the City violated the effluent limitations of its NPDES permit, as follows:

- a. The City failed to demonstrate compliance with the required 85% removal for CBOD<sub>5</sub> in 7 different months from April 2011 through March 2014;
- b. The City exceeded the permitted maximum daily ammonia concentration 28 times from August 2011 through August 2014;
- c. The City exceeded the permitted monthly average ammonia concentration 9 times from August 2011 through August 2014;
- d. The City exceeded the permitted maximum daily ammonia mass 6 times from May 2011 through May 2014; and
- e. The City exceeded the permitted monthly average ammonia mass in June 2011, April 2014 and June 2014.

22. 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).

23. As specifically alleged by the EPA in the preceding Count 1, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$187,500.

### **CONSENT AGREEMENT**

24. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, the EPA has determined that an appropriate civil penalty to settle this action is **EIGHTEEN Thousand Dollars (\$18,000)**.

25. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

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

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

28. 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 this Consent Agreement and the accompanying proposed Final Order.

29. 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.

30. Nothing contained in this Complaint and Consent Agreement/Final Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

31. Respondent consents that the civil penalty payment made pursuant to this Complaint and Consent Agreement/Final Order will not be deducted for purposes of federal taxes.

32. Respondent certifies by signing this Consent Agreement/Final Order that Respondent is presently in compliance with Administrative Order for Compliance on Consent, EPA Docket No. CWA-07-2015-0067 to achieve compliance with all requirements of Sections

301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its NPDES permit.

33. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

34. The effect of settlement described is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in Paragraph 32.

35. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

36. Respondent shall pay a civil penalty of Eighteen Thousand Dollars (\$18,000) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number "CWA-07-2015-0068 and shall be made by certified or cashier's check made payable to "Treasurer, United States of America," and remitted to:

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

Copies of the check shall be mailed to:

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

and

Elizabeth Huston  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

37. 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.

38. Respondent and Complainant shall pay their own costs and attorneys' fees

incurred as a result of this action.

39. 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.

40. With respect to matters not addressed in this Consent Agreement/Final Order, 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 for punitive damages.

41. This Consent Agreement/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, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

42. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

**FOR THE COMPLAINANT,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7:**

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Elizabeth Huston  
Assistant Regional Counsel  
Office of Regional Counsel

**FOR THE RESPONDENT,  
CITY OF ALBIA, IOWA:**

9-24-15  
Date

Tom Murphy  
Signature

Name: Tom Murphy

Title: City of Albia, Mayor

**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.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

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

**CERTIFICATE OF SERVICE**

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested to:

The Honorable Tom Murphy, Mayor  
City of Albia  
120 South A Street  
Albia, Iowa 52531

and by first class mail to:

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name