

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CITY OF BURLINGTON
NPDES Permit #2909001**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2007-WW- 22

**TO: Bruce Slagle
City Manager
City Hall
400 Washington St.
Burlington, IA 52353**

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Burlington (Burlington) and the Iowa Department of Natural Resources (Department) for the purpose of establishing an enforceable schedule for implementing the Long Term Control Plan (LTCP) submitted by Burlington and approved by the Department, and for eliminating and reducing the effects of combined sewer overflows and sanitary sewer overflows. Pursuant to this Order, Burlington shall comply with the compliance schedule contained herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Paul Brandt
IDNR Field Office #6
1023 W. Madison
Washington, IA 52353
Ph: 319-653-2135

Relating to this Order:

Jon C. Tack
Legal Services Bureau
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph. 515-281-8889

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10 which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Burlington is located on the Mississippi River in Des Moines County and has a population of approximately 27,000. Burlington operates a wastewater treatment plant and a combined sewer collection system pursuant to NPDES Permit # 2909001. The use of a combined sewer collection system results in the discharge of sewage when precipitation events cause flows greater than the capacity of the collection system. These discharge points are referred to as combined sewer overflows (CSOs). Burlington is in the process of separating sanitary sewer collection systems from storm water collection systems in order to eliminate CSOs. Unauthorized discharges from a separate sanitary sewer collection system are referred to as sanitary sewer overflows (SSOs).

2. On October 21, 2001, NPDES Permit #2909001 was reissued to Burlington. The permit contained the following compliance schedule in regard to the separation of the city's sanitary sewer collection system from the storm sewer collection system:

- By April 21, 2002 submit a combined sewer system operation plan addressing the nine minimum controls (NMCs) required by federal law for combined sewer systems. **(The plan was submitted on April 29, 2002)**
- By October 25, 2003 implement the NMCs and submit a report documenting the actions taken for implementing the NMCs. **(The report was submitted on July 3, 2006.)**
- By October 25, 2004 submit a Long Term Control Plan (LTCP) for the control and elimination of CSOs. **(This deadline was extended to November 30, 2005 by agreement of the parties. The LTCP was submitted on November 29, 2005)**

3. On August 19, 2002, Burlington submitted a proposed schedule for the Hawkeye Sewer Project. The Hawkeye Sewer Project separated the sanitary and storm sewer systems within the Hawkeye Sewer Basin. The Hawkeye Sewer Basin services 2/3 of Burlington. The project was undertaken with the assistance of a \$7,000,000 grant from the U.S. EPA.

4. On July 2, 2003, the Department issued a variance to Burlington to allow for an alternate design for the Hawkeye Sewer Project. On August 18, 2003, Construction Permit No. 2004-0072 was issued and contained the following construction schedule designed to eliminate CSOs:

- a. Complete construction of the Hawkeye Sanitary Trunk Sewer by July 1, 2004.
- b. Complete construction of the Gunnison Street Interceptor tank by August 1, 2007 and plug Gunnison Street sanitary sewer overflow.
- c. Complete construction of the Brook Street Interceptor tank by August 1, 2008 and plug the Brook Street sanitary sewer overflow.
- d. Complete construction of the Lucas/Mt. Pleasant Interceptor tank by August 1, 2009 and plug the Lucas/Mt. Pleasant sanitary sewer overflow.
- e. Complete construction of the Burlington Northern Interceptor tank by August 1, 2010 and plug the Burlington Northern sanitary sewer overflow.

- f. Eliminate all basement backups and sanitary sewer bypassing in the Hawkeye Sewer Basin collection system by August 1, 2010.
5. The Hawkeye Sanitary Trunk Sewer separation project was completed in April of 2005.
6. On May 24, 2005, the U.S. Environmental Protection Agency (EPA) conducted a combined sewer overflow inspection of the Burlington combined sewer collection system. Violations noted included the failure to implement the NMCs by October 25, 2003; the failure to submit a LTCP by October 25, 2004; the failure to provide sufficient documentation to prove that dry weather overflows from the combined sewer collection system and SSOs from the separated system did not occur, or if they did occur, that measures were taken to minimize the impact on the receiving stream. The inspection further documented at least three SSOs.
7. On November 1, 2005, the Department provided a partially completed NPDES permit application form to be completed by Burlington. The renewal application deadline for Burlington was April 27, 2006.
8. On November 9, 2005, the Department issued a Notice of Violation to Burlington due to the late reporting of bypasses that occurred on October 24, 2005 and November 3, 2005.
9. On November 22, 2005, the Department inspected the Burlington wastewater treatment facility and reviewed the records of the facility. It was noted that the sanitary sewer overflow on Brook Street had discharged eleven times from July 26, 2005 to November 15, 2005 and the Lucas/Mt. Pleasant line overflow had discharged twice during this period. By letter dated December 2, 2005, the Department required Burlington to submit a written plan of action by January 15, 2006 to address the discharges from the Brook street overflow.
10. On November 29, 2005, Burlington submitted its required LTCP.
11. On December 28, 2005, the Department met with Burlington. Burlington proposed to proceed with the construction of the Gunnison Street Interceptor Tank as required by the schedule of compliance.
12. On April 14, 2006, Burlington submitted a completed application for renewal of NPDES Permit #2909001.
13. On July 3, 2006, Burlington submitted a report documenting the implementation of the required NMCs.
14. On September 13, 2006, the Department conducted a CSO/SSO inspection of the Burlington combined sewer collection system. At that time, Burlington proposed to build

two interceptor tanks to service the four lines currently discharging from the new Hawkeye sanitary sewer as SSOs.

15. On June 23, 2007, the Department received reports of sewage backups in homes in Burlington and a major storm sewer surcharge that was reported to have caused a flash flood in downtown Burlington. The outflow was from the Hawkeye Basin storm sewer system.

16. On June 27, 2007, the Department and Burlington met to discuss a compliance schedule for implementation of the LTCP.

17. On August 24, 2007, Burlington submitted a proposed compliance schedule.

IV. CONCLUSIONS OF LAW

The Department and Burlington agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. CSOs constitute prohibited discharges.

2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems.

3. The U.S. EPA promulgated the Combined Sewer Overflow Control Policy (CSOCP), U.S. EPA on April 19, 1994, and this policy was incorporated into the Clean Water Act (CWA) at 33 U.S.C. 1342(q)(1). The CSOCP requires permittees with combined sewer systems (CSSs) that have CSOs to immediately undertake a process to accurately characterize their sewer systems, to demonstrate implementation of the NMCs, and to develop a long-term CSO control plan (the LTCP). The NMCs are:

1. Proper operation and regular maintenance programs for the sewer system and the CSOs;
2. Maximum use of the collection system for storage;
3. Review and modification of pretreatment requirements to assure CSO impacts are minimized;
4. Maximization of flow to the POTW for treatment;
5. Prohibition of CSOs during dry weather;
6. Control of solid and floatable materials in CSOs;
7. Pollution prevention;
8. Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts; and

9. Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

4. NPDES Permit #2909001 reissued to Burlington on October 21, 2001, contained the following compliance schedule in regard to the separation of the city's sanitary sewer collection system from the storm sewer collection system:

- By April 21, 2002 submit a combined sewer system operation plan addressing the nine minimum controls (NMCs) required by federal law for combined sewer systems. **(The plan was submitted on April 29, 2002)**
- By October 25, 2003 implement the NMCs and submit a report documenting the actions taken for implementing the NMCs. **(The report was submitted on July 3, 2006.)**
- By October 25, 2004 submit a LTCP. **(This deadline was extended to November 30, 2005 by agreement of the parties. The LTCP was submitted on November 29, 2005)**

Burlington failed to comply in a timely manner with the permit requirements for the implementation of the NMCs.

5. The CSOCP requires the State of Iowa to incorporate the LTCP in an enforceable mechanism to ensure compliance. The execution of a consent administrative order between the Department and Burlington is necessary for compliance with the CSOCP.

V. ORDER

The Department and Burlington hereby agree, and Burlington is hereby ordered to comply with the following schedule:

1. Burlington shall perform all tasks necessary to fully implement the LTCP previously submitted to the Department, as modified herein.

2. By June 1, 2008, Burlington shall award a contract for the construction of any and all activities necessary for construction of the 2007 Hawkeye Sewer Separation Phase IV, construction permit #2008-131-S which states, "One 1.03 million gallon and one 0.705 million gallon reinforced concrete wastewater equalization tank, 955 linear feet of sanitary sewer main of various sizes, manholes, installation of flow control gates, manual or self flushing devices, electrical and mechanical controls and all related appurtenances necessary to complete the project in accordance with the approved plans and specifications".

3. By June 1, 2009, Burlington shall complete construction of any and all activities necessary to complete the 2007 Hawkeye Sewer Separation, Phase IV, construction permit #2008-131-S described above in item #2.

4. By September 1, 2011, Burlington shall submit to the Department a report identifying potential alternatives and total estimated costs for separating the remaining combined portions of the Cascade Watershed sewer system and eliminating all CSOs in the Cascade Watershed.
5. By January 1, 2012, Burlington shall submit to the Department a report describing the plans for financing the construction necessary for the separation of the remaining combined portions of the Cascade Watershed sewer system and the elimination of all CSOs in the Cascade Watershed and a detailed construction schedule for the completion of said project.
6. By May 1, 2012, Burlington shall begin construction of the improvements to the Cascade Watershed sewer system necessary for the separation of the remaining combined portions of the Cascade Watershed sewer system.
7. By November 1, 2013, Burlington shall complete construction of all improvements necessary to the elimination of all CSOs within the Cascade Watershed, with the exception of any necessary intercepter tanks.
8. By November 1, 2014, Burlington shall complete construction of any intercepter tanks necessary to the elimination of all SSOs in the Cascade Watershed.
9. By September 1, 2015, Burlington shall submit to the Department a report identifying potential alternatives, total estimated costs, plans for financing, and a detailed construction schedule for separating the remaining combined portions of the Market, Angular, South, and Locust (MASL) Watershed sewer systems and eliminating all CSOs in the MASL Watersheds.
10. By May 1, 2016, Burlington shall begin construction of the improvements to the MASL Watershed sewer systems necessary for the separation of the remaining combined portions of the MASL Watershed sewer systems.
11. From July 1, 2017 until all CSOs are eliminated from the Burlington sanitary sewer collection system, Burlington shall submit yearly progress reports on CSO projects ongoing in Burlington, including any projects not governed by the terms of this Order. Reports shall be submitted by July 1st of each year beginning in 2017.
12. By November 1, 2024, Burlington shall complete construction of all improvements necessary to the elimination of all CSOs within the MASL Watersheds, with the exception of any necessary intercepter tanks.
13. By November 1, 2005, Burlington shall complete construction of any intercepter tanks necessary to the elimination of all SSOs in the MASL Watersheds.

VI. AMENDMENT

The Department and Burlington acknowledge and agree that the terms and conditions set forth in this Order are based upon all conditions known and information available as of the date of issuance of this Order. If during the implementation of this Order, new information becomes available showing that the scope and complexity of the construction work required pursuant to Section V. will be significantly more extensive than originally anticipated, and that it will be technically impracticable to meet the completion date despite use of best efforts by Burlington, then Burlington may request and the Department in good faith consider granting an extension of time to complete the required construction work. Any such request by Burlington 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 Burlington believes it is technically impracticable, despite the use of best efforts, to meet the original completion date. In any request for the amendment of this Order, Burlington shall also propose and justify an alternative completion date. Any extension of time that is agreed to by the parties shall be formalized through the issuance of an amendment to this Order.

Burlington may also request an amendment to this Order based upon any changes in applicable state or federal statutes and regulations to the extent such changes materially alter the basis for the requirements set forth herein or otherwise render the requirements of this Order unnecessary or contrary to law.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Burlington. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with sections V. Order of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR

Dated this 19 day
NOV

IOWA DEPARTMENT OF NATURAL RESOURCES

Nov., 2007

William L. Ell

Dated this 5th day

CITY OF BURLINGTON

November, 2007

NPDES #2909001; Field Office #6: Jon Tack, EPA; Wayne Farrand; Tom