

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

IN THE MATTER OF:

**CITY OF OTTUMWA
NPDES Permit # IA0058611**

**ADMINISTRATIVE CONSENT
ORDER
NO. 2011-WW- 14**

TO:
Dale Uehling
Mayor
City of Ottumwa
105 E. Third
Ottumwa, Iowa 52501

I. SUMMARY

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

Any questions regarding this Order should be directed to:

QUESTIONS TO DEPARTMENT

Relating to technical requirements:

Dennis Ostwinkle, Supervisor
DNR Field Office #6
1023 W. Madison
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515/281-8889

QUESTIONS TO OTTUMWA

Ted Payseur
Veenstra & Kimm, Inc.
3000 Westown Parkway West
Des Moines, IA 50266-1320
Phone: 515-225-8000

John Hall and Gary Cohen, Attorneys for
City of Ottumwa
Hall & Associates
1620 I Street., N.W., Suite 701
Washington, D.C. 20006
Phone: 202-463-1166

II. JURISDICTION

This Order is issued pursuant to the provisions of 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 (wastewater) and the rules adopted or permits issued pursuant to that part, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Ottumwa is located on the Des Moines River and has a population of approximately 24,998 people. Ottumwa operates a wastewater treatment plant and a combined sewer collection system pursuant to NPDES Permit No. IA0058611. The use of a combined sewer collection system results in the discharge of sewage from point(s) within the collection system when precipitation events cause flows greater than the capacity of the collection system. These discharge points are referred to as combined sewer overflows (CSOs). Ottumwa is in the process of rehabilitating some portions of the combined sewer system to provide separate sanitary sewer and storm water collection systems in order to eliminate some CSOs.
2. On or about April 21, 2003, NPDES Permit No. IA0058611 was reissued by the Department to Ottumwa. The permit contained a schedule in regard to the city's development of a Long Term Control Plan (LTCP) to address CSOs.
3. On March 28, 2007 the Department received from Ottumwa a document entitled "Report on Combined Sewer Overflows Long Term Strategy, Ottumwa, Iowa" dated March 27, 2007. On April 30, 2007, the Department received from Ottumwa a document entitled "Report on Combined Sewer Overflows Long Term Strategy, Ottumwa, Iowa" revised April 27, 2007. These documents make up the original LTCP for Ottumwa. The LTCP provided for the complete separation of the sanitary sewer collection systems and storm water collection systems. The Department never formally acted upon the LTCP.
4. On or about October 11, 2007, Ottumwa made timely application for renewal of NPDES Permit No. IA0058611.

5. The Department has not acted on the NPDES permit renewal application as of yet and Ottumwa has not yet been issued a CSO Phase II NPDES permit. The existing NPDES permit is deemed to be administratively continued pending a Department action on the permit renewal application.

6. A document entitled "Final Report of Combined Sewer Overflow Long Term Strategy," dated March 25, 2008 was submitted to the Department in April of 2008.

7. Notwithstanding the fact that Ottumwa has not yet been issued a CSO Phase II NPDES permit, it has been implementing sewer separation projects as provided in its previously submitted LTCP.

8. Ottumwa has completed the following projects:

a. Phase 1 -- Separation of sanitary and storm sewers tributary to CSO 010-Moore Street. Phase 1 is located in Basin 11 in an area bounded by Church Street, Vine Street, and Madison Avenue. Phase 1 eliminated approximately 81 known storm sewer intakes from connection to the Moore Street Pumping Station and resulted in the eventual elimination of CSO 010. This phase was calculated to eliminate 8% of the total CSO flow, and 4% of total biochemical oxygen demand (BOD) loading from CSOs. Total cost: \$8,708,224.19.

b. Phase 2 -- Separation of sanitary and storm sewers tributary to the Finley Avenue CSO in Basin 11 in an area bounded by Vine Street, Madison Avenue, Ransom Street and Mary Avenue. Phase 2 eliminated approximately 144 known storm sewer intakes from connection to the Finley Avenue CSO outfall. The goal of this work, in conjunction with Phases 1 and 5, is to eliminate CSO 005. Completion of this and prior phases is calculated to eliminate 17% of the total flow, and 8% of the BOD loading from CSOs. Total cost: \$6,328,653.81.

9. Phase 3 of Ottumwa's LTCP is currently underway. Phase 3 provides for the removal of storm sewer intakes in Basin 11 to the west of the Phase 2 Project. This project requires the construction of storm sewers generally along Willard Street with branch sewers serving the neighborhoods west of Ransom Street. The goal of this Phase, combined with work in Basin 10, is to convert the Finley Avenue sewer to a sanitary-only trunk sewer. Phase 3 is over 60% complete at the time of execution of this Order. Total cost: \$8,733,547.52. Additionally, Ottumwa has completed the Blakes Branch -- Northside Study portion of Phase 4 at a cost of approximately \$600,000.

10. Ottumwa has met with the Department and proposes to undertake a Use Attainability Analysis (UAA) to determine whether primary contact recreation is reasonably expected to occur in the waterbodies at selected CSO outfalls in Ottumwa.

11. On January 28, 2011, Ottumwa submitted to the Department an updated LTCP. Further information was provided by letter dated February 10, 2011. These two documents

are hereinafter referred to as the "updated LTCP". In the updated LTCP, Ottumwa is no longer intending to undertake complete sewer separation. Ottumwa now believes that more cost-effective approaches are available that would achieve compliance with U.S. EPA's CSO Policy (see below).

12. The Department has determined that the updated LTCP satisfies the presumptive approach of the federal CSO policy, including the nine minimum controls, and is acceptable to the Department and the schedule contained herein is based upon this updated LTCP.

IV. CONCLUSIONS OF LAW

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

1. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (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.
2. 567 IAC 64.7(5)(i) states that each issued NPDES permit shall provide for and ensure that the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.
3. Pursuant to 567 IAC 63.6(1), bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. This new regulatory provision has yet to be incorporated into Ottumwa's NPDES permit.
4. Pursuant to Iowa Code section 455B.199A, the Department may allow schedules of compliance to be included in permits whenever authorized by federal law or regulations. Such schedules shall be established to maximize benefits and minimize local financial impact while improving water quality. Section 455B.199A further provides that if information is provided showing that the anticipated costs of compliance with a schedule have no reasonable relationship to environmental or public health needs or benefits, or may result in other detrimental environmental impacts, such as significant greenhouse gas emissions, the projects may be deferred, in whole or in part as determined appropriate by the Department and a variance granted, as consistent with applicable federal law or regulations.
5. Iowa Code section 455B.199B provides that the Department may provide for a variance to regulation when it determines that regulations affect a disadvantaged community.
6. The U.S. EPA issued the Combined Sewer Overflow Control Policy (CSO Policy) on April 19, 1994, 59 Fed. Reg. 18688 et seq. This policy is incorporated into the Clean Water Act (CWA) at 33 U.S.C. § 1342(q)(1) and requires that NPDES permits and orders conform to the CSO Policy. Section III of the CSO Policy provides for LTCPs to be coordinated with

state water quality standards and specifically provides that the “[d]evelopment of the long-term plan should be coordinated with the review and appropriate revision of [water quality standards] WQS and implementation procedures on CSO-impacted waters to ensure that the long-terms controls will be sufficient to meet water quality standards.” 59 Fed. Reg. 18694.

7. The April 21, 2003 NPDES permit issued by the Department to Ottumwa is a Phase I NPDES permit as described in the CSO Policy intended to implement the nine minimum controls and require the development of a LTCP.

8. Under the CSO Policy at 59 Fed. Reg. 18696, a municipal permittee is not required to implement its LTCP until a Phase II NPDES Permit is issued.

9. Section I.D of the CSO Policy provides for special consideration of small systems identified as jurisdictions with populations less than 75,000. Section I.D special consideration includes minimizing the burdens placed on small communities.

10. Ottumwa is a small system under the CSO Policy and may be accorded special treatment to the extent allowed under the CSO Policy. This includes, as set forth in U.S. EPA’s *Combined Sewer Overflows Guidance for Permit Writers*, EPA 832-B-95-008 (Sept. 1995) at 3-34, State discretion to chose not to include, among other things, an implementation schedule. The Department has required an implementation schedule since the issuance of Ottumwa’s 2003 NPDES permit.

11. One of the key principles of the CSO Policy at 59 Fed. Reg. 18689 is to provide sufficient flexibility to municipalities, especially financially disadvantaged communities, to consider the site-specific nature of CSOs and to determine the most cost-effective means of reducing pollutants and meeting CWA objectives and requirements.

12. One of the key principles of the CSO Policy at 59 Fed. Reg. 18689 is to allow a phased approach to implementation of CSO controls considering a community’s financial capability.

13. Ottumwa is a financially distressed municipality under the CSO Policy and may be accorded the additional flexibility provided under the CSO Policy accorded to such communities.

14. Ottumwa is a disadvantage community and may be afforded the flexibility provided in 455B.199A and B.

15. The CSO Policy at 59 Fed. Reg. 18695 recognizes the inherent authority of States to adopt partial uses by defining when a swimming use does not exist, such as during certain seasons of the year or during a particular type of storm event.

16. Partial or complete sewer separation is not required by the CSO Policy. Partial or complete sewer separation is one option that may be considered.

17. The Department agrees that, based on existing data, it is not known whether the remaining CSOs (Harrow's Branch, Northside, Barton's Branch, Walnut and Orchard Street) discharges on the north side of the Des Moines River are causing water quality standard exceedances that must be remedied. The Department agrees that a further evaluation on attainable uses and water quality standards compliance is appropriate to identify whether complete sewer separation or other further action is necessary to comply with the CSO Policy.

18. Iowa Administrative Code at §567-61.3(3)a(1) provides that the E. Coli content shall not exceed the levels noted in the Bacteria Criteria Table when the Class "A1," "A2," or "A3" uses can reasonably be expected to occur. U.S. EPA asserts that it can approve a State standard in part and that the modifying phrase "uses can reasonably be expected to occur" has been disapproved by U.S. EPA. This Order reserves to the various parties their respective arguments as to the validity of the U.S. EPA action.

19. While the facts and underlying merits of the UAA remains to be seen, the parties recognize the potential for a UAA to support a change to a water quality standard consistent with 40 C.F.R. § 131.10(g) and the CSO Policy and, as such, Ottumwa may meet applicable water quality standards without any additional activities beyond those described in the updated LTCP.

V. ORDER

THEREFORE, the Department orders and Ottumwa agrees to the following:

1. Except as otherwise provided herein or in a subsequently issued NPDES permit, Ottumwa shall perform all tasks necessary to fully implement the updated LTCP submitted on January 28, 2011. Ottumwa retains all rights to contest a subsequently issued NPDES permit or any change to the LTCP.

2. The following schedule contained in the updated LTCP is hereby adopted and incorporated herein as the terms and conditions of this Order:

a. Reporting. By January 15th of each year during the term of this Order, Ottumwa shall submit to Department Field Office #6 and to the Department's Water Quality Bureau a progress report describing the work completed the previous year and include the projected work for the next calendar year, including any proposed variation from the schedule set forth below. Additionally, Ottumwa shall monitor CSO outfalls, as necessary, to effectively characterize CSO impacts and the efficacy of CSO controls as mutually agreed upon between DNR and Ottumwa. Such monitoring shall be reported along with Ottumwa's monthly operating reports.

b. Phase 3. By December 31, 2011, Ottumwa shall complete Phase 3 as described in the updated LTCP. Phase 3 provides for the removal of intakes in Basin 11 west of the Phase 2 project. This project will require construction of storm sewers generally along Willard Street with branch sewers serving the neighborhoods west of Ransom Street. The goal of this Phase, combined with work in Basin 10, is to convert the Finley Avenue sewer to a sanitary-only trunk sewer. Phase 3 is over 60% complete at the time of execution of this Order. This phase, in conjunction with Phases 2 and 5, is to eliminate CSOs 005 and 009. Completion of this phase and the prior phases is calculated to eliminate 24% of the total CSO flows, and to reduce BOD loading to CSOs by 26%. Total cost: \$8,733,547.52.

c. Phase 4. By December 31, 2015, Ottumwa shall complete Phase 4 as described in the updated LTCP. Phase 4, also known as the 2010 Flood Protection Project or the Westside Sewer project, is intended to prevent flooding around the existing water treatment plant and to separate the combined sewers generally located north of the Des Moines River and west of Vine Street. Goals of this project include providing 500-year flood protection and 100-year storm event protection for the water treatment plant, 100-year storm event and flood protection for Northside Basin, 60% reduction of flow to CSO 003, and limiting combined sewers in this area to the Central Business District only. Only those portions of the project related to sewer separation, rather than flood protection, are considered to be a part of the updated LTCP and this Order. Completion of this phase and the prior phases is calculated to eliminate 39% of total CSO flows and 26% of BOD loading to CSOs. Total estimated project cost: \$15,380,000.

d. Phase 5. By December 31, 2016, Ottumwa shall complete Phase 5 as described in the updated LTCP. Phase 5 includes the separation of sanitary and storm sewers located in the Basin 10 area. The goal of this phase is to eliminate CSO 009 at Richmond Avenue through a combination of storm water intake removal, sewer rehabilitation, construction of a larger Richmond Pumping Station, and separation of the creek stormwater which flows through the sewer. Completion of this phase and the prior phases is calculated to eliminate 42% of total CSO flow and to reduce BOD discharge by CSOs by 30%. Total estimated cost: \$5,000,000.

e. Phase 6. By December 31, 2014, Ottumwa shall complete Phase 6 as described in the updated LTCP. Phase 6 includes the inspection, cleaning, and televising of the Northside combined sewer. This sewer extends from west of the downtown easterly to the Northside CSO (CSO 003) located near Vine Street. Needed repairs to the Northside combined sewer will be undertaken as discovered. Total estimated cost: \$10,000,000.

f. Phase 7. By December 31, 2019, Ottumwa shall complete Phase 7 as described in the updated LTCP. Phase 7 includes replacing the existing stormwater pumps at the Ottumwa lagoon. Total estimated cost: \$5,000,000.

g. Phase 8. By December 31, 2025, Ottumwa shall complete Phase 8 as described in the updated LTCP. Phase 8 includes constructing a new separate sanitary sewer through the Blake's Branch basin. This phase will also include a new separate trunk sewer that will include adequate downstream capacity to serve a new separate sewer line that will extend

north from the Blake's Branch basin up to the Ottumwa Industrial Airport. Completion of this phase and the prior phases is calculated to eliminate 68% of the total CSO flow and to reduce BOD discharge by CSOs by 43%. Total estimated cost: \$8,000,000.

h. Phase 9. By December 31, 2036, Ottumwa shall complete Phase 9 as described in the updated LTCP. Phase 9 includes construction of a new separate sanitary trunk sewer that will extend north from the Blake's Branch basin to the Ottumwa Industrial Airport and nearby industrial facilities. The construction of this trunk sewer will provide a direct path for high strength wastewater flows to the wastewater treatment plant thereby diverting these flows from the remaining combined sewer systems. Completion of this phase and prior phases is calculated to reduce CSO flows by 87% and to reduce BOD discharge by CSOs by 88%. Total estimated cost: \$8,000,000.

i. Phase 10. From the date of issuance of this Order through December 31, 2036, Ottumwa will continue annual inflow and infiltration (I & I) reduction measures as described in the updated LTCP. The completion of all ten phases of the updated LTCP is calculated to reduce CSO flows by 92% from 2003 levels.

3. Use Attainability Analysis (UAA). Nothing in this Order shall be construed to restrict the ability of Ottumwa to perform and submit a UAA and, if appropriate, seek redesignation of portions of the Des Moines River with respect to the recreational uses of that water.

Ottumwa and the Department expect, and it is the Department's intent, that within a period of one hundred and eighty (180) days after Ottumwa's submittal of a UAA which includes or accompanies a request for re-designation of the Des Moines River or any other related water body, the Department will either (A) initiate the process to revise water quality standards or favorably respond to the other requested relief or (B) issue a final agency decision that a water quality standards revision will not be undertaken or other appropriate relief will not be provided because contact recreation uses can reasonably be expected to occur during discharge events. The preceding sentence is conditioned on Ottumwa timely providing the Department with any additional information that the Department reasonably requires to conduct or evaluate the UAA.

4. Rescission of Funding. Iowa Code sections 455B.199A and 455B.199B recognize that, particularly for financial distressed communities such as Ottumwa, these municipalities should be provided the maximum flexibility allowed under law, steps should be taken to avoid adversely impacting such communities and that financial assistance should be provided to the extent feasible. The Department and Ottumwa are entering into this Order based upon funding commitments currently obtained by Ottumwa. The Department and Ottumwa recognize that the withdrawal or other rescission of funding commitments may necessitate the renegotiation of this Order. Ottumwa and the Department shall work cooperatively to assure the coordination of the compliance schedule included herein with the grants and other funding received by Ottumwa and the projects herein, as applicable. Such coordination may

necessitate the amending of the compliance schedule to ensure the receipt or retention of funding.

5. Coordination of Schedule with Potential Total Maximum Daily Load (TMDL). To the extent a TMDL is developed by the Department or U.S. EPA that would be applicable to Ottumwa's CSO discharge(s), Ottumwa shall be provided the flexibility as allowed by the CSO Policy for implementing LTCP provisions to assure attainment of applicable water quality standards, including compliance with the TMDL.

6. Within 90 days of the issuance of this Order, the Department will provide notice of a draft NPDES permit for Ottumwa, which shall require implementation of a LTCP, as provided herein.

7. The Department and Ottumwa 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, including any change in law or regulation, showing that the scope and complexity of the construction work requested pursuant to Section V will be significantly more extensive, expensive or financially impact Ottumwa more than originally anticipated or that it will be impracticable to meet the completion date, then Ottumwa may request and the Department in good faith consider granting an extension of time to complete the required construction work to the extent allowed by applicable law. Any such request by Ottumwa 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 Ottumwa believes it is impracticable to meet the original completion date. In any request for the amendment of this Order, Ottumwa 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 or an NPDES permit.

8. Affordability. It is the goal of Iowa law (Iowa Code section 16.134) that sewer rates not exceed one and one-half percent of a community's median household income (MHI). Notwithstanding any provision to the contrary, nothing herein shall be deemed to require Ottumwa to undertake any project identified in Paragraph 2, above, if sewer rates would exceed two percent (2%) of the MHI in Ottumwa. While this condition exists, the compliance schedule under this Order or amendments thereof may be stayed upon Ottumwa requesting such stay and providing the Department information documenting that sewer rates exceed 2% percent MHI. In the event that Ottumwa documents that the 2% MHI threshold has been exceeded, the parties agree to develop an amended compliance schedule.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. Pursuant to this chapter, the Department is authorized to issue an administrative order with penalties for noncompliance with this Order or to refer such noncompliance to the Iowa Attorney General for the initiation of a District Court action seeking such penalties and injunctive relief.

3. Ottumwa reserves its rights to challenge any subsequent action by the Department.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Ottumwa. For that reason, Ottumwa waives the right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with section V. Order, paragraphs 1 through 7, of this Order constitutes full satisfaction of all requirements pertaining to the violations described herein. The Department reserves the right to issue an administrative order with a penalty or to seek referral to the Attorney General for any violation of this Order. Ottumwa reserves the right to challenge the appropriateness of any other order and/or the imposition of a penalty.

For Chad Gage, Deputy Director
ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 13th day of
September, 2011

Dale M. Uehling
DALE UEHLING, MAYOR
City of Ottumwa

Dated this 7th day of
September, 2011

NPDES #; Field Office #6; Jon Tack; EPA; Lee Wagner; J.C.1