



## Public Works

City Transit  
263-8152

## MEMORANDUM

Equipment Maintenance  
Roadway Maintenance  
Collection & Drainage  
Building & Grounds  
Engineering

To: Gregg Mandsager, City Administrator  
CC: Fran Donelson, Secretary  
FROM: Randy Hill, Public Works Director  
DATE: October 30, 2012  
RE: Consent Order Extension

## INTRODUCTION:

The City of Muscatine is under a Consent Order from the Environmental Protection Agency (September 2007) to complete combined sewer overflow and sewer separation by December 31, 2024.

## BACKGROUND:

On August 30, 2012 the City of Muscatine submitted a letter requesting an extension of the Consent Order for the sewer separation because of financial considerations impacting the City's ability to pay. With the West Hill Sewer Separation Project projected to cost \$50 million the City hired a financial consultant to develop a plan for generating the funds necessary to complete the sewer separation.

## RECOMMENDATION/RATIONALE:

The City's financial consultant, PFM, assisted the City in developing a long-term financing plan for the West Hill Sewer Project. This Plan was completed and reviewed with City Council in January 2011 and was based on the 4 year extension to the Consent Order to December 31, 2028. With this extension, based on assumptions used in the Plan, the City is not expected to need to borrow funds for the project until the FY 2018/2019 fiscal year with an additional borrowing projected to be needed near the project completion date in 2027/2028. As the major financing source for this project is Local Option Sales Tax, this 4 year extension adds \$2 million per year (based on current local option receipts) or a total of \$8 million during this 4 year period, for the financing of this project. This extension also negates the need for multiple, compounding sewer rate increases specifically for this project, which would have been needed during the project construction years if the extension had not been granted.

The EPA has reviewed and approved the City's request for an extension. They have sent an Amended Administrative Order for Compliance on Consent that requires the City to eliminate the West Hill area CSO by December 31, 2028. It is necessary for the City of Muscatine to act on the modified Order and return to EPA.

City Staff recommends approval of the Amended EPA Consent Order granting an extension of sewer separation (West Hill) to December 31, 2028.

**BACKUP INFORMATION:**

1. Amended Administrative Order for Compliance on Consent
- 2.
- 3.
- 4.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

OCT 24 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
Article No.: 7011 0470 0002 2746 0663

The Honorable DeWayne Hopkins  
Mayor, City of Muscatine  
5602 Reynolds Avenue  
Muscatine, Iowa 52761

Re: City of Muscatine Order for Compliance on Consent  
EPA Docket No. CWA-07-2007-0088

Dear Mayor Hopkins:

On August 30, 2012, the City of Muscatine submitted a letter requesting an extension to complete Combined Sewer Overflow elimination in the West Hills area required pursuant to the September 2007 Order for Compliance on Consent, noted above. The City has indicated the cost of the overall separation project has increased from \$40 million to nearly \$50 million dollars. The City has broken the larger sewer separation project for the West Hill area into smaller projects that will allow the City to fund some of the projects with the proceeds from the Local Option Tax while money is raised for the final phases of the project. The City has increased the sewer rate on average 5% each year over the last six years, and a one cent Local Option Tax dedicated to the CSO projects has been in place since 1994. In 2011, the City hired a financial consultant to develop a plan for generating the funds necessary to complete the West Hill area sewer separation. In January 2012, the consultant firm proposed a funding plan to the City Council that was approved. This financial plan assumes a 4% annual increase of the sewer use rate, a 1.5% annual increase in Local Option Taxes beginning in fiscal year 2014, and assumes Local Option Tax will be extended past the current June 30, 2019, expiration date. This proposed funding plan is predicted to raise the necessary funds to complete the West Hill Project by 2028. The City is also completing an \$18 million upgrade of the Waste Water Treatment Plant.

Enclosed is a modification to the Order that requires the City to eliminate the West Hills area CSO by December 31, 2028. The City will be required to provide progress reports to the Environmental Protection Agency with a copy to the Iowa Department of Natural Resources by July 15 of each year through completion of the project. Please sign the amended order, and return it within two weeks to:

Karen A. Flournoy  
Director  
Environmental Protection Agency, Region 7  
Water, Wetlands and Pesticides Division  
11201 Renner Boulevard  
Lenexa, KS 66219

If you have any questions regarding this letter, please contact Jodi Bruno of my staff at bruno.jodi@epa.gov or 913-551-7810.

Sincerely,



Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

cc: Dennis Ostwinkle, IDNR  
Tom Atkinson, IDNR  
Michael Knott, Stanley Consultants  
Gregg Mandsager

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
THE CITY OF MUSCATINE, ) Docket No. CWA-07-2007-0088  
IOWA )  
Respondent, ) AMENDED  
Proceedings under Sections 308(a) and ) ADMINISTRATIVE ORDER FOR  
309(a)(3) of the Clean Water Act, ) COMPLIANCE ON CONSENT  
33 U.S.C. §§ 1318(a) and 1319(a)(3) )  
\_\_\_\_\_  
)

Background and Findings of Violation

Jurisdiction

1. The AMENDED 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

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

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 measures, 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.

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

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 actions.

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 Section 309(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

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

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, 2028, 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, 2028 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:

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

**Anthony Petruska, or his successor  
Water Wetlands and Pesticides Division  
U.S. Environmental Protection Agency- Region VII  
11201 Renner Boulevard  
Lenexa, Kansas 66219.**

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

**Dennis Ostwinkle, or his successor  
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.**

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

**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 there from unless otherwise provided in this Order.**

Issued this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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**Karen A. Floumoy  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency – Region 7**

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**Elizabeth Huston  
Assistant Regional Counsel**

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

**For the Respondent, City of Muscatine, Iowa:**

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**Signature**

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**Date**

---

**Name**

---

**Title**

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

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this amended Findings of Violation and Administrative Order for Compliance 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 by first class certified mail, return receipt requested, to:

The Honorable DeWayne Hopkins  
Mayor, City of Muscatine  
5602 Reynolds Avenue  
Muscatine, IA 52761

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

---

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
THE CITY OF MUSCATINE, )  
IOWA ) AMENDED  
Respondent, ) ADMINISTRATIVE ORDER FOR  
Proceedings under Sections 308(a) and ) COMPLIANCE ON CONSENT  
309(a)(3) of the Clean Water Act, )  
33 U.S.C. §§ 1318(a) and 1319(a)(3) )  
\_\_\_\_\_  
)

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 measures, 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.

In the Matter of:  
City of Muscatine

AMENDED FINDINGS OF VIOLATION  
and ORDER FOR COMPLIANCE ON CONSENT

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 actions.

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 Section 309(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, 20242028, 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, 20242028 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, or his successor  
Water Wetlands and Pesticides Division  
U.S. Environmental Protection Agency- Region VII  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

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

Dennis Ostwinkle, or his successor  
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 seg., 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

In the Matter of:  
City of Muscatine

**AMENDED FINDINGS OF VIOLATION  
and ORDER FOR COMPLIANCE ON CONSENT**

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 there from unless otherwise provided in this Order.

Issued this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency – Region 7

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Elizabeth Huston  
Assistant Regional Counsel

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

**For the Respondent, City of Muscatine, Iowa:**

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Signature

---

Date

---

Name

---

Title

In the Matter of:  
City of Muscatine

AMENDED FINDINGS OF VIOLATION  
and ORDER FOR COMPLIANCE ON CONSENT

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Amended Findings of Violation and Administrative Order for Compliance 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 by first class certified mail, return receipt requested, to:

The Honorable DeWayne Hopkins  
Mayor, City of Muscatine  
5602 Reynolds Avenue  
Muscatine, IA 52761

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

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Date