

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2015-0022
)	
THE CITY OF LEAVENWORTH,)	
KANSAS,)	
)	FINDINGS OF VIOLATION AND
Respondent,)	ADMINISTRATIVE ORDER FOR
)	COMPLIANCE ON CONSENT
)	
Proceeding under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to the City of Leavenworth, Kansas (“City” or “Respondent”), pursuant to the authority vested in the Administrator of EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. EPA, together with the City, enter into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3. It is the parties’ intent through this agreement to address discharges of pollutants by the City into the waters of the United States in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful.

4. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. For purposes of this Order, Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

5. Respondent neither admits nor denies the factual allegations set forth in this CA/FO.

II. Statutory and Regulatory Framework

6. 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 NPDES permit issued pursuant to that Section.

7. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

9. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works ("POTW") includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

10. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA. Section 308 of the CWA, 33 U.S.C. § 1318, authorizes the EPA to request and collect information in order to, among other matters, determine whether the owner of a point source is in compliance with the CWA.

11. The Kansas Department of Health and Environment ("KDHE") is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding between EPA and KDHE dated May 23, 1973, as amended. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

III. EPA Findings

Findings of Fact and Law

12. The City of Leavenworth is a political subdivision of the state organized under the laws of Kansas, and as such is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. At all relevant times, the City has owned and operated a trickling filter wastewater treatment facility (“WWTF”) and its associated sewer collection and transmission systems, which receive and treat wastewater from residential, commercial, and industrial connections within Leavenworth, Kansas, and which together are a POTW, as defined by 40 C.F.R. § 403.3(q).

14. The City’s WWTF discharges to the Missouri River, which is a “navigable water” and a “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

15. Effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

17. 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.

18. On July 1, 2008, KDHE granted NPDES Permit No. KS0036366 (hereafter “2008 NPDES Permit”), to the Respondent for discharges from the WWTF to the Missouri River, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The 2008 NPDES Permit had an expiration date of December 31, 2012. On January 1, 2013, KDHE reissued the Respondent a NPDES Permit, which has an expiration date of December 31, 2017 (hereafter “Current NPDES Permit”).

19. On November 20 and 25, 2013, an EPA representative performed a Sanitary Sewer Overflow (“SSO”) Inspection (hereafter “the EPA inspection”) of the City’s wastewater collection system 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.

20. During the EPA inspection described in Paragraph 19 above, the inspector reviewed the City’s records related to the wastewater collection system, conducted a visual inspection of the City’s four lift stations, and completed a SSO inspection checklist.

21. On or about April 4, 2014, EPA sent 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 April 7, 2014. On or about April 17, 2014, and April 29, 2014, the City submitted responses to the Request for Information which were received by the EPA on or about April 22, 2014, and April 29, 2014.

22. The City submitted to EPA copies of SSO Reports submitted to KDHE for March 2010 through November 2013, as part of the Inspection described in Paragraph 19 and the City's responses to the Request for Information described in Paragraph 21.

Allegations of Violation

23. The facts stated in Paragraphs 12 through 22, above, are herein incorporated.

Unpermitted Discharges

24. Respondent's 2008 NPDES Permit and Current NPDES Permit (collectively "NPDES Permits") authorize Respondent to discharge pollutants only from a specified point source, identified in the NPDES Permits as "Outfall 001A1," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permits.

25. Within the past five (5) years, Respondent has discharged untreated wastewater from locations within the Respondent's POTW, also known as SSOs. None of the locations of these discharges are the Outfall 001A1 identified in Respondent's NPDES Permits.

26. Upon review of the City's responses to the Request for Information described in Paragraph 21 and the SSO Reports submitted to KDHE described in Paragraph 22, the City has discharged pollutants from the City's POTW at locations other than Outfall 001A1 between March 2010 and March 2014, and upon information and belief, the SSOs continue to the present. These SSOs are not permitted or otherwise authorized by the CWA.

27. Of the SSOs described in Paragraphs 25 and 26, 19 SSOs discharged untreated wastewater to tributaries of the Missouri River ("receiving waters"). The receiving waters are "navigable waters" and "waters of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation 40 C.F.R. § 122.2.

28. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of the terms and conditions of the NPDES Permits 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).

Violation of Respondent's NPDES Permits

29. Standard Condition No. 8 of the City's 2008 NPDES permit, titled "Facilities Operation," requires:

The permittee shall at all times maintain in good working order and efficiently and effectively operate all treatment, collection, control systems or facilities, to achieve compliance with the terms of this permit. Such proper operation and maintenance procedures shall also include adequate laboratory controls and appropriate quality assurance procedures... The permittee shall take all necessary steps to minimize or prevent any adverse impact to waters of the State resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. When necessary to maintain compliance with the permit conditions, the permittee shall halt or reduce those activities under its control which generate wastewater routed to this facility.

30. Standard Condition No. 6 of the City's Current NPDES permit, titled "Facilities Operation," requires:

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this permit and Kansas and Federal law... The permittee shall take all necessary steps to minimize or prevent any adverse impact to human health or the environment resulting from noncompliance with any effluent limits specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. When necessary to maintain compliance with the permit requirement, the permittee shall halt or reduce those activities under its control which generate wastewater routed to this facility.

31. Within the past five (5) years, Respondent has discharged untreated wastewater from locations within the Respondent's POTW, also known as SSOs. Many of the SSOs were, in whole or in part, the result of the City's failure to at all times properly operate and maintain its POTW consistent with its standard conditions outlined in Paragraphs 29 and 30, above.

32. Upon review of the City's responses to the Request for Information described in Paragraph 21 and the SSO Reports submitted to KDHE described in Paragraph 22, the City has discharged pollutants from the City's POTW in violation of its NPDES permit standard conditions between March 2010 and March 2014, and upon information and belief, the SSOs continue to the present.

33. The City's failure to comply with the operations and maintenance provision of the Standard Conditions in Paragraphs 29 and 30, is a violation of the terms and conditions of its NPDES Permits 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).

Order for Compliance

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), EPA hereby ORDERS, and Respondent hereby AGREES to take, the actions described below:

34. Consistent with EPA's finding in Paragraph 33, above, the City agrees to undertake necessary actions with the goal of eliminating and preventing recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permit by no later than five (5) years from the effective date of this Order.

Submissions

35. Within sixty (60) days of the effective date of this Order, the City shall submit to EPA, with a copy to KDHE, a report describing the procedures implemented by the City to properly operate and maintain its wastewater collection system to eliminate, to the extent feasible, all SSOs, and procedures which will be fully implemented by no later than five (5) years from the effective date of this Order.

36. Within sixty (60) days of the receipt of this Order, the City shall submit to EPA, with a copy to KDHE, a report describing the procedures implemented by the City to ensure SSOs are properly and completely reported to KDHE.

37. Consistent with the City's NPDES Permits, Standard Conditions 14 and 16, the City acknowledges that reports, as described in Paragraph 36 above, made to KDHE are available to the public. The City also acknowledges the necessity for transparency of such noncompliance; therefore will make available to the public via the City's website, www.lvks.org, information describing the date and location of a SSO event which occurs within the City's POTW that discharges to a water of the United States as soon as practicable, but no later than five (5) business days of knowledge of the event.

38. Reporting to EPA and KDHE: In addition to the submittals required by Paragraphs 35 and 36 above, the City shall submit to EPA, with a copy to KDHE, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every January 28 and July 28 until termination of this Order pursuant to Paragraph 50 below; the first report is due July 28, 2016, and will include activities that took place between the effective date of this Order and June 2016. The City's report shall include, at a minimum:

- a. The number of unauthorized discharges which occur within the City's POTW during the reporting period;
- b. The specific measures taken by the City to correct and prevent recurrence of each unauthorized discharge which occurred within the City's POTW during the reporting period; and
- c. A copy of each unauthorized discharge report submitted to KDHE during the reporting period.

39. All documents, including certifications, required to be submitted to EPA by this Order, shall be submitted by electronic mail to:

dillard.wayne@epa.gov
Wayne Dillard, P.E., or his successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph. Hard copy documents are deemed submitted on the date of postmark.

40. A copy of documents required to be submitted to KDHE by this Order, shall be submitted by mail to:

Michael B. Tate, PE, or his successor
Director, Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson St, Suite 420
Topeka, Kansas 66612-1367.

41. After review of the information submitted by the City pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

General Provisions

Effect of Compliance with the Terms of this Order

42. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Section 309(g)(6) of the CWA, 33 U.S.C. § 1319(g)(6), addresses the effect of this Order on subsequent actions by the EPA or the State and with respect to citizen suits.

Reservation of Rights

43. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.

44. Failure to comply with the terms of the Order may result in Respondent's liability for statutory civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the Order.

45. Subject to the limitations of Paragraph 44, above, Respondent reserves the right to contest liability in any subsequent action filed by EPA to seek penalties for violation of this Order, and reserves the right to contest liability in any subsequent action filed by EPA for any violations alleged in the Findings, above.

46. With respect to matters not addressed in this 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/or other legal remedies allowed by law.

Access and Requests for Information

47. Nothing in this Order shall limit 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

48. 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.

Effective Date

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

Termination

50. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Signatories

51. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

For the Complainant, U.S. Environmental Protection Agency, Region 7:

Issued this 16th day of December, 2015.



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division



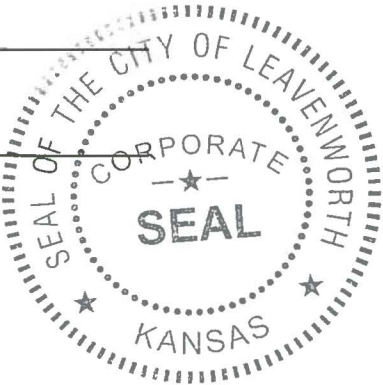
Melissa A.C. Bagley
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, City of Leavenworth, Kansas:

[Handwritten Signature] 12-10-2015
Signature Date

Lisa Weakley
Name

Mayor
Title



CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, U.S. 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 on Consent by first class certified mail, return receipt requested, to:

The Honorable Mark Preisinger
Mayor, City of Leavenworth
100 N 5th Street
Leavenworth, Kansas 66048,

and by first class mail to:

Michael B. Tate
Director, Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

Date

12/21/15 