

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

IN THE MATTER OF:) Docket No. CWA 07-2017-0100
)
CITY OF PARSONS, KANSAS)
)
Respondent)
) COMPLAINT AND CONSENT
) AGREEMENT / FINAL ORDER
)
Proceedings under Section 309(g))
of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the United States Environmental Protection Agency’s (“EPA”) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) serves as notice that EPA has reason to believe that the City of Parsons, Kansas violated Section 301 of the CWA, U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (“Complainant”).

4. The City of Parsons, Kansas (hereafter “Respondent” or “the City”) is and was at all relevant times a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), organized under the laws of the state of Kansas.

Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the nation's waters. *See* Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants 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 in accordance with the terms of a National Pollutant Discharge Elimination System ("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. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial and municipal waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the "waters of the United States," which are defined at 40 C.F.R. § 122.2 and which include tributaries to waters of the United States.

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

12. 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, and applicable implementing regulations. EPA maintains concurrent enforcement authority with authorized state programs for violations of NPDES permits.

EPA's General Allegations

13. The City is a "person" as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. The City is and was at all times relevant to this action the owner and/or operator of a Publicly Owned Treatment Works ("POTW") in Labette County, Kansas, that includes a wastewater treatment plant ("WWTP") and sewage collection system, which receive wastewater from various domestic and non-domestic sources. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

15. The POTW discharges to Labette Creek in Labette County, Kansas, and thereafter to the Neosho River.

16. Labette Creek and the Neosho River are both "navigable waters" of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362.

17. The City's POTW is a "point source" that "discharges pollutants" to "navigable waters" of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*

18. On or about June 19, 2008, KDHE issued NPDES Permit No. KS0097560 to Respondent pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. KDHE reissued the current permit ("Permit") on or about June 13, 2013 and it expires on June 30, 2018. While the two permits are substantially the same, the pollutant parameters that differ between the two permits are noted in the table below.

19. Part A of the City's Permit, Effluent Limits and Monitoring Requirements, includes requirements for sampling frequency, sample type and discharge limitations for various pollutant parameters, including, but not limited to, Biochemical Oxygen Demand measured over a five-day period ("BOD₅"), Total Suspended Solids ("TSS"), *E. coli* and Ammonia as Nitrogen ("Ammonia"), as follows:

Parameter*	Units	Monthly Average	Weekly Average	Daily Maximum	Monitoring Frequency
BOD ₅ (November – April) (May – October)	mg/L**	25.0 20.0	40.0 30.0	-	Weekly
TSS	mg/L	30.0	45.0	-	Weekly
<i>E. coli</i> (April – October) (November – March) (geometric mean of data)	#/100 ml***	427 3,843	9,032 -	-	Weekly
Ammonia	mg/L	1.5-4.9	-	8.6	Weekly

* *E. Coli* and Ammonia parameters were different in the 2008 permit;

** Milligrams per Liter; *** Colony count per 100 Milliliters

20. Part A of the City’s Permit, Effluent Limits and Monitoring Requirements, requires the City’s WWTP to meet a 30-day removal efficiency of 85 percent for BOD₅ and TSS, based on comparison of effluent sample measurements to influent sample measurements.

21. On or about February 14 through 18, 2011, an EPA representative performed a Compliance Sampling Inspection (“2011 EPA Inspection”) of the City’s POTW pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), and documented violations of the City’s Permit including, but not limited to, recordkeeping, discharge and effluent violations.

22. Based on the findings from the 2011 EPA Inspection and other relevant information, on or about February 2, 2012, EPA issued a Findings of Violation and Order for Compliance (“2012 Order”) to the City pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. § 1318(a) and 1319(a), Docket No. CWA-07-2012-0008. The 2012 Order required the City to correct the deficiencies, eliminate and prevent recurrence of the violations and comply with all applicable requirements of its Permit.

23. On or about April 18 through 21, 2016, an EPA inspector performed a Compliance Sampling Inspection (“2016 EPA Inspection”) of the City’s POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). A copy of the Inspection Report was sent to KDHE and the City on or about July 8, 2016.

24. During the 2016 EPA Inspection, the EPA inspector collected influent and effluent samples, interviewed City personnel, conducted a walk-through inspection of the WWTP and reviewed the City’s records related to the Permit. The EPA inspector’s observations included, but were not limited to:

- a. Numerous exceedances of numerical permit limits for *E. coli*, ammonia and TSS between June 2014 and January 2016;
- b. Bypassing and discharging of wastewater at either the influent lift station or the peak flow equalization basin between May 2015 and September 2016;
- c. Sludge levels in the clarifiers frequently exceeded the target sludge depth;
- d. Various items of equipment necessary for proper WWTP operation were out of service awaiting repairs; and
- e. Computer software limited the waste activated sludge pumping rates to below the pumps designed capacities.

Allegations of Violation

25. The facts stated above, are herein incorporated.

Count 1 Unpermitted Diversions and Discharges

26. Paragraphs 8 and 9 of the Standard Conditions of the City's Permit prohibit any diversion from, or bypass of, facilities necessary to maintain compliance with the permit, except under circumstances not applicable here.

27. Part A of the City's Permit authorizes discharges only from Outfall 001A1, and prohibits the discharge of pollutants except in compliance with effluent limits and monitoring requirements listed for Outfall 001A1.

28. Information obtained during the 2016 EPA Inspection and review of the City's bypass reports to KDHE revealed that the City diverted and discharged at least 90.6 million gallons of wastewater between April 2015 and September 2016 from locations other than Outfall 001A1.

29. Municipal waste and sewage discharged into water are "pollutants" as defined by Section 502 of the CWA, 33 U.S.C. 1362.

30. Each discharge of pollutants from any location other than a permitted outfall is a violation of the terms and conditions of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2
Failure to Comply with Effluent Limitations

31. Part A of the City's Permit establishes effluent limitations for the permitted discharge outfall, as described in Paragraph 19 above.

32. The 2016 EPA Inspection revealed that the City failed to meet the Permit's 30-day removal efficiency of 85 percent for TSS and exceeded the Permit's weekly and monthly average concentration limitations for TSS, the daily maximum and monthly average concentration limitations for ammonia, and the weekly geometric mean for *E. coli*, including the following:

a. Total Suspended Solids

- i. The City discharged concentrations of TSS in excess of the Permit's weekly average limitation during October 2014; March, April, June and August 2015; and January 2016;
- ii. The City discharged concentrations of TSS in excess of the Permit's monthly average limitation during April and June 2015;
- iii. The City did not achieve the Permit's 30-day removal efficiency of 85 percent for TSS in June 2015;

b. Ammonia as Nitrogen

- i. The City discharged concentrations of ammonia in excess of the Permit's daily maximum limitations four times during the months of June and July 2014;
- ii. The City discharged concentrations of ammonia in excess of the Permit's monthly average concentration in June and July 2014; and

c. *E. coli*

- i. The City discharged concentrations of *E. coli* in excess of the Permit's weekly geometric mean in June 2014.

33. Each failure to comply with effluent limitations is a violation of the terms and conditions of the City's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3
Failure to Properly Operate and Maintain Facilities
and Systems of Treatment and Control

34. Standard Condition 6 of the City's Permit requires the City to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the City to achieve compliance with the requirements of the Permit and state and federal law.

35. The 2016 EPA Inspection found a variety of equipment used in the wastewater treatment and control process out of service or malfunctioning, including multiple flow measurement devices, one of the three influent pumps which had been out of service for a month at the time of the inspection and the south channel of the ultraviolet disinfection system which was awaiting scheduled maintenance. These findings indicate a failure to promptly repair and to properly operate and maintain equipment and systems of treatment and control at the POTW.

36. Upon reviewing the City's daily operation logs during the 2016 EPA Inspection, the inspector found that sludge levels in the WWTP clarifiers frequently exceed 10 feet, while the facility's operational target depth is only 1.5 feet. During the inspection, the inspector also measured sludge depths between 10 to 16 feet. Maintaining target sludge depth in the clarifiers is part of properly operating and maintaining systems of treatment and control at the WWTP.

37. The City's failure to properly operate and maintain facilities and systems of treatment and control is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

CONSENT AGREEMENT

38. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

39. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

40. Respondent neither admits nor denies the factual allegations contained in this Complaint and CA/FO.

41. Respondent waives any right to contest the allegations set forth in this CA/FO and its right to appeal this Consent Agreement and the accompanying Final Order.

42. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

43. This CA/FO addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this CA/FO. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law. EPA further reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

44. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. §1251 *et seq.*, and all regulations promulgated there under.

45. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA.

46. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

47. Nothing contained in the CA/FO shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

48. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of Twenty Thousand Dollars (\$20,000) within thirty (30) days of the effective date of the Final Order.

49. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and CA/FO and to execute and legally bind Respondent to it.

Penalty Payment

50. Respondent shall pay a civil penalty of Twenty Thousand Dollars (\$20,000) within thirty calendar (30) days of the effective date of the Final Order. Respondent shall pay the penalty by cashier's or certified check made payable to the "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2017-0100 to:

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

51. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Katherine Reitz
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

52. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

53. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

Parties Bound

54. This CA/FO shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for Respondent with respect to matters included herein comply with the terms of this CA/FO.

Reservation of Rights

55. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or

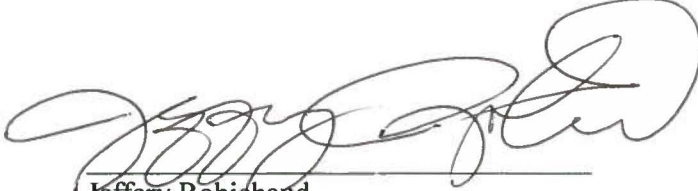
administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

56. With respect to matters not addressed in this CA/FO, 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 punitive damages.

Effective Date

57. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and Final Order shall be effective on the date the Final Order is filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this CA/FO.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

5/3/17
Date



Katherine Reitz
Attorney Advisor

5/3/17
Date

RESPONDENT:
CITY OF PARSONS, KANSAS



The Honorable Tom Shaw
Mayor, City of Parsons, Kansas
P.O. Box 1037
112 South 17th Street
Parsons, Kansas 67357

3-6-2017

Date

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

May 8, 2017
Date

Karina Bonomeo
Signature

KARINA BORROMEIO
Name

REGIONAL JUDICIAL OFFICER
Title

IN THE MATTER Of City of Parsons, Kansas, Respondent
Docket No. CWA-07-2017-0100

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

reitz.katherine@epa.gov

Copy via Email to Respondent:

Ross Albertini, City Attorney
ralbertini@parsonsk.com

Debbie Lamb, City Manager
dlamb@parsonsk.com

Dated: 5/8/17



Kathy Robinson
Hearing Clerk, Region 7