

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

IN THE MATTER OF)	
)	Docket No. CWA-07-2017-0019
The City of North Kansas City, Missouri,)	
)	
Respondent.)	FINDINGS OF VIOLATION
)	AND ORDER FOR COMPLIANCE
Proceedings under Section 309(a)(3))	ON CONSENT
of the Clean Water Act,)	
33 U.S.C. § 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Findings of Violation are made and Administrative Order for Compliance on Consent (“Order”) is issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the city of North Kansas City, Missouri (“Respondent” or “City”).

3. The EPA, together with the Respondent, enter into this Section 309(a)(3) Order for the purpose of carrying 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.”

4. It is the Parties’ intent through entering into this Order to address alleged noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit regarding its Authorized Pretreatment Program. As set forth in this Order, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent; (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent; and, (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also 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 any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 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. Section 307 of the CWA provides for the promulgation of regulations establishing Pretreatment Standards for introduction of pollutants into publicly owned treatment works (“POTW”), and prohibits operation in violation of such standards.

7. The Missouri Department of Natural Resources (“MDNR”) is the state agency within the State of Missouri that has been authorized by the EPA to administer the federal NPDES and Pretreatment Programs pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and applicable implementing regulations, including 40 C.F.R. Part 403. As such, the MDNR is the Approval Authority for the Pretreatment Program in Missouri.

8. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

EPA’s General Findings

9. The city of North Kansas City, Missouri, is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. At all times relevant, Respondent was, and still is, the owner and/or operator of a POTW in Clay County, Missouri, that includes a sewage collection system that receives 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; sewers, pipes and other conveyances of wastewater; and has jurisdiction over Indirect Dischargers to the Respondent’s POTW.

11. The City’s collection system conveys wastewater to a POTW owned and operated by the city of Kansas City, Missouri, pursuant to an agreement between the two POTWs.

12. The City owns and operates a “point source” that “discharges pollutants” to “navigable water” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

13. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*

14. Respondent’s Pretreatment Program was approved by the MDNR pursuant to the authority of Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 1342, on or about August 13, 1984.

15. The MDNR issued NPDES Permit No. MO0107956 (“Permit”) on or around July 1, 1988, to Respondent pursuant to the authority of Section 402 of the CWA, 33 U.S.C. § 1342.

16. The Permit was amended on or about March 24, 1989, to add a special condition requiring the City to implement and enforce its approved Pretreatment Program in compliance with 10 CSR 20-6.100, which incorporates by reference 40 C.F.R. Part 403 and certain other federal Pretreatment Standards and limitations for industrial facilities that discharge to POTWs.

17. The Permit expired on June 30, 1993, but has been administratively extended by the MDNR.

18. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits the owner or operator of any source to operate in violation of any effluent standard or prohibition or Pretreatment Standards, as defined at 40 C.F.R. § 403.3(l). In addition, an Indirect Discharger or Industrial User (“IU”), as defined respectively at 40 C.F.R. § 403.3(i) and (j), must also comply with any applicable Pretreatment Requirements, as defined at 40 C.F.R. § 403.3(t).

19. Pursuant to 40 C.F.R. § 403.8(f), an approved Pretreatment Program must be based on appropriate legal authority and include procedures that are fully and effectively exercised and implemented to regulate IUs, including, but not limited to:

- a) requiring compliance by IUs with applicable Pretreatment Standards and Requirements, pursuant to 40 C.F.R. 403.8(f)(1)(ii);
- b) controlling contribution to the POTW by IUs to ensure compliance with applicable Pretreatment Standards and Requirements through permits, orders, or similar means, that contain minimum conditions set forth at 40 C.F.R. § 403.8(f)(1)(iii)(B); and
- c) randomly sampling and analyzing the effluent of IUs in order to independently identify occasional and continuing noncompliance by IUs, pursuant to 40 C.F.R. 403.8(f)(2)(v).

20. On or about January 21 through 22, 2016, the EPA performed a Pretreatment Program Audit (“Audit”) of the City’s Pretreatment Program implementation activities pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). A copy of the Audit report was sent to the MDNR and the City by letter dated March 15, 2016.

21. During the Audit, the EPA auditor interviewed City Pretreatment personnel and reviewed documents, including the City’s Sewer Use Ordinance and records maintained by the City regarding its implementation of the Pretreatment Program.

22. Subsequent to the Audit, by letter dated April 26, 2016, the EPA sent an Information Request to the City pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

23. By letter dated June 8, 2016, and received June 10, 2016, the City submitted its response to the Information Request to the EPA.

EPA'S FINDINGS OF VIOLATION

Count 1

Failure to Require Industrial User Compliance

24. All facts stated above are hereby incorporated by reference.

25. Based on information and data collected during the Audit and the City's response to the Information Request, the Respondent failed to require compliance with applicable Pretreatment Standards and Requirements, as specified by 403.8(f)(1)(ii). Specifically, Respondent:

- a) incorrectly classified Holland Nameplate as subject to the Electroplating Categorical Standards, 40 C.F.R. Part 413, when in fact Holland Nameplate is subject to the Metal Finishing Categorical Standards, 40 C.F.R. Part 433, because the discharge from its current location postdates August 1982;
- b) failed to require PAS Technologies, subject to the Electroplating Categorical Standard, 40 C.F.R. Part 413, and Holland Nameplate and IHD Solutions, subject to the Metal Finishing Categorical Standard, 40 C.F.R. Part 433, to either sample and demonstrate compliance with their respective Total Toxic Organics limits, or allow certification of compliance following the development of a toxic organic management plan, as required by each IU's respective Categorical Standard;
- c) failed to update the classification and Pretreatment Standards for United States Gypsum Company after the categorical standard was revised in regulations promulgated by the EPA in 1998, eliminating 40 C.F.R. Part 430, Subpart E, "Paperboard from Wastepaper Subcategory"; and
- d) failed to require that Periodic Reports on Continued Compliance submitted by IUs in accordance with 40 C.F.R. 403.12(e) contain the certification statement required by 40 C.F.R. 403.12(f).

Count 2

Failure to Issue Adequate Industrial User Permits

26. All facts stated above are hereby incorporated by reference.

27. Based on information and data collected during the Audit and the City's response to the Information Request, the Respondent failed to issue permits to IUs that met the minimum requirements specified at 40 C.F.R. § 403.8(f)(1)(iii)(B), specifically, some or all of the permits issued to IUs failed to include:

- a) effluent limits, as required by 403.8(f)(1)(iii)(B)(3);
- b) an adequate identification of the sampling location and sample type, as required by 403.8(f)(1)(iii)(B)(4) and 403.12(g)(3); and
- c) a statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, as required by 403.8(f)(1)(iii)(B)(5).

Count 3

Failure to Independently Determine Industrial User Compliance

28. All facts stated above are hereby incorporated by reference.

29. Respondent is required by 40 C.F.R. § 403.8(f)(2)(v), to carry out monitoring procedures necessary to determine, independent of information supplied by industrial users, the compliance or noncompliance with applicable Pretreatment Standards for the IUs.

30. Significant IUs, as defined by 40 C.F.R. § 403.3(v), discharging to Respondent's POTW include American Railcar Industries, Davis Paint Company, Holland Nameplate, IHD Solutions, North Kansas City Hospital, PAS Technologies, TNEMED Company, Inc., and United States Gypsum Company.

31. Significant IUs, are required, pursuant to 40 C.F.R. § 403.12(g)(4), to demonstrate compliance with limits using 40 C.F.R. Part 136 sampling and analysis requirements, which specifies that compliance with cyanide limitations must be determined through analysis of grab samples.

32. Based on information and data collected during the Audit and the City's response to the Information Request, the Respondent, in violation of 40 C.F.R. Part 136 and 40 C.F.R. § 403.12(g)(4), collected composite samples rather than grab samples for cyanide analysis from Significant IUs subject to a cyanide limitation.

33. Respondent's violations identified in Counts 1 through 3 above are violations of the terms and conditions of its Permit issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and Pretreatment Standards and Requirement set forth in Section 307 of the CWA, 33 U.S.C. § 1317, and implementing regulations at 40 C.F.R. Part 403.

Reasonable Time to Achieve Compliance

34. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that the Respondent must immediately administer its Authorized Pretreatment Program in compliance with requirements of Section 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 1342, and shall revise and update its Program in accordance with the schedule set forth below.

ORDER FOR COMPLIANCE

35. Based on the EPA Findings set forth above, and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS and Respondent hereby AGREES, to take the actions described below:

36. By no later than February 28, 2017, the Respondent shall submit to the EPA a draft Implementation Plan to correct the violations cited in Counts 1 through 3, above. Both the Implementation Plan and the submittals listed therein (with the exception of item a), shall be subject to review and comment as set forth in Paragraph 37, below. The draft Implementation Plan shall include dates by which Respondent will submit information to the EPA regarding actions necessary to achieve compliance, including but not be limited to the following:

- a) a copy of any new draft or final agreement with Kansas City, Missouri for treatment of North Kansas City wastewater that shows the pollutant allowances granted by Kansas City, Missouri to North Kansas City;
- b) a draft Sewer Use Ordinance containing the required Pretreatment Streamlining regulation changes, which were adopted by the MDNR on October 30, 2012, and any of the optional Streamlining provisions the City desires the authority to implement;
- c) a draft permit template containing, at a minimum, all of the elements required by 40 C.F.R. 403.8(f)(1)(iii);
- d) a proposal for providing the public information regarding the City's Pretreatment Program and industrial user compliance status, such as posting relevant information on the City's website; and
- e) updating the Annual Pretreatment Report with correct and accurate information, including but not limited to flows and industrial information.

37. Each submittal made by the Respondent pursuant to Paragraph 36, above, will be reviewed by the EPA for completeness and sufficiency, and managed as follows:

- a) If the EPA determines the submittal is complete and sufficient, the EPA will notify the Respondent, by mail or email, to promptly take action on each submittal, as appropriate, including:
 - i. implement the Implementation Plan;
 - ii. submit the draft Sewer Use Ordinance to the MDNR for approval as a modification to its approved Pretreatment Program; and
 - iii. within sixty (60) days of the MDNR's approval of the City's revised Sewer Use Ordinance and approved Pretreatment Program, issue new permits to all Significant IUs.

- b) If the EPA notifies the City, by mail or email, that that further revisions are needed with regard to any submittal, the City shall make such revisions and resubmit the revised submittal to the EPA within thirty (30) calendar days of receipt of EPA's notice.
- c) If the City believes it needs additional time to complete one or more of the requirements of this Order, the City shall submit a request by mail or email to Paul Marshall, at the address identified in Paragraph 40 below, indicating the tasks for which more time is needed and the period of additional time requested. Any decision by the EPA to grant such request shall be in writing and delivered to the City by mail or email.

38. Respondent shall submit a report with documentation, as appropriate, to the EPA after completing each activity in the approved Implementation Plan, after receiving the MDNR's approval of a revised Pretreatment Program pursuant to Paragraph 37.a.ii, and after issuing new permits to all Significant Industrial Users pursuant to Paragraph 37.a.iii.

Certification

39. Each submission made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

Submittals

40. All documents required for submittal to the EPA shall be sent by certified mail, return receipt requested, or by email to:

Paul T. Marshall, Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
11201 Renner Blvd
Lenexa, Kansas 66219

marshall.paul@epa.gov

General Provisions

Effect of Compliance with the Terms of This Order

41. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of liability for its responsibility to obtain and comply with any required local, state and/or federal permits.

42. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

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. The EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, 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 CWA for any violation whatsoever.

Access and Requests for Information

44. 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

45. 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.

Parties Bound

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

Failure to Comply

47. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court for the Southern District of Iowa may impose such penalties if, after notice and

opportunity for a hearing, the court determines that you have violated the CWA as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

Effective Date


48. The terms of this Order shall be effective and enforceable against Respondent on the date this Order is signed by the EPA.

Termination


49. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

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

Issued this 13 day of February, 2017.



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

For the Respondent, City of North Kansas City, Missouri:

Don Stielow 2-08-17
Signature Date

Don Stielow
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 Findings of Violation and Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance on Consent to:

The Honorable Don Stielow
Mayor, City of North Kansas City
2010 Howell St.
North Kansas City, Missouri 64116

and by first class mail to:

Paul Dickerson
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Mitchell Roberts
Missouri Dept. of Natural Resources
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710.

2/13/17
Date

