

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

THE CITY OF CONWAY SPRINGS,  
KANSAS

Respondent,

Proceedings under Section 308 and Section  
309(a)(3) of the Clean Water Act, 33 U.S.C.  
§§ 1318 and 1319(a)(3)

Docket No. CWA-07-2016-0003

ADMINISTRATIVE ORDER FOR  
COMPLIANCE ON CONSENT

**Preliminary Statement**

1. This Administrative Order for Compliance on Consent (“Order”) is issued by the U.S. Environmental Protection Agency (“EPA”), pursuant to the authority vested in the Administrator of the EPA by Sections 308 and 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319(a)(3), as amended. This authority has been delegated by the Administrator of the 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 Conway Springs, Kansas (“Respondent” or “City”), a political subdivision of the state of Kansas. Respondent is the owner and/or operator of the Publicly Owned Treatment Works (“POTW”), located in Sumner County, Kansas.

3. The EPA, together with the City 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 noncompliance by the City in violation of its National Pollutant Discharge Elimination System (“NPDES”) Permit. As set forth in this Order, the Parties have amicably reached agreement regarding the time frames for the City 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. 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, 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*, 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.

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, the 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 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. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System (“NPDES”) program in Kansas pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

### **Findings of Fact**

11. The City is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.

13. The City's POTW discharges to Slate Creek, which is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

15. Respondent's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. KDHE issued a NPDES Permit No. KS0030651 to Respondent for discharges from its POTW to Slate Creek ("NPDES Permit"). The Current NPDES Permit became effective July 1, 2012, with an expiration date of June 30, 2017.

17. The NPDES Permit states that the City's wastewater treatment facility, which discharges through Outfall 001A1, consists of a three cell wastewater stabilization lagoon system, with a design flow of 0.168 million gallons per day ("MGD"). The POTW does not measure influent to the POTW.

18. On February 17-19, 2015, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of the City's wastewater treatment facility 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.

19. During the EPA inspection, the inspector collected wastewater samples from Outfall 001A1, reviewed the City's records related to the NPDES Permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001A1 discharges. The EPA also reviewed the City's Monthly Discharge Monitoring Reports, including those submitted to KDHE after the inspection through June 2015. The EPA's observations included, but were not limited to:

- a. the facility discharged in 31 of the 36 months between July 2012 and June 2015;
- b. of the 36 months with a discharge, the facility exceeded the monthly average permit limits for biochemical oxygen demand ("BOD") a total of 16 times and exceeded the monthly average permit limits for total suspended solids ("TSS") a total of 9 times;
- c. influent data showed the facility did not meet the 85% removal requirement for BOD in 21 of the 36 months in which discharges occurred; and
- d. the facility appeared periodically to be receiving slug loading of an undefined nature from one or more unidentified sources.

**Findings of Violation**

20. The facts stated in Paragraphs 11 through 19, above, are hereby incorporated by reference.

**Count I  
Violation of Numeric Limits**

21. The Effluent Limits and Monitoring Requirements section of the City's NPDES Permit established limitations and monitoring requirements for Outfall 001A1, discharge from the wastewater treatment facility, including the following:

- a. biochemical oxygen demand ("BOD") – weekly average concentration limitation of 45 mg/L, 30 day average concentration limitation of 30 mg/L, and compliance with a removal efficiency of 85%; and
- b. total suspended solids ("TSS") – weekly average concentration limitation of 120 mg/L and 30 day average concentration limitation of 80 mg/L.

22. The City has failed to meet the removal efficiencies for BOD required by the City's NPDES Permit, for the months of December 2012; January through September, November and December 2013; January, February, September and November 2014; and February through June 2015.

23. The City discharged 30 day average concentrations of BOD in excess of the limitation of 30 mg/L in the months of November and December 2012; January through May, July, August and November 2013; February and March 2014; and February through May 2015.

24. The City discharged 30 day average concentrations of TSS in excess of the limitation of 80 mg/L in the months of July and November 2012; March 2013; July through November 2014; and June 2015.

25. The City's failure to comply with the effluent limitations of the NPDES Permit is a violation of the terms and conditions of its NPDES Permit 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).

**Count II  
Failure to Properly Operate and Maintain POTW**

26. Condition #6 of the Standard Conditions section of the City's Permit, titled "Facilities Operation," requires the City to "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 [City] to achieve compliance with the requirements of the [Permit]...."

27. The EPA inspection revealed that the City failed to properly operate and maintain the wastewater treatment system by failing to operate and/or maintain proper function of the aerators at Cells 1 and 2 of the POTW. Failure to operate and/or maintain the aerators has contributed to the numerous failures to comply with the effluent limitations in the City's NPDES Permit.

28. The City's failure to properly operate and maintain the wastewater treatment facility 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 as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **Order for Compliance**

29. Based on the FINDINGS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Sections 308(a) and 309(a)(3) and (5) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent hereby agrees to perform in accordance with the terms and conditions set forth below, and is hereby ORDERED to take, the actions described below:

Immediately upon receipt of this Order, the City shall identify and implement all necessary actions to correct the deficiencies cited above, and to comply with the conditions and limitations of its NPDES Permit.

30. *Compliance Plan.* Within ninety (90) days of receipt of this Order, the City shall submit to the EPA, with a copy to KDHE, a comprehensive written plan and proposed schedule for achieving compliance with the City's permitted effluent limitations and operation and maintenance requirement of the NPDES Permit (the "Compliance Plan"). The Compliance Plan shall describe in detail the specific actions and schedule for work to be completed, including measures to determine sources of suspected slug loadings impacting the facility, and why such actions or work are sufficient to ensure compliance with the effluent limitations. The Compliance Plan shall include a detailed schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, but no later than December 31, 2018. The EPA will review and approve the proposed schedule for proposed actions/work, and may provide comments on the City's proposed Compliance Plan.

31. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, the City shall submit a written certification to the EPA, with a copy to KDHE, that all City actions required by this order have been completed.

32. *Monitoring Plan.* Within ninety (90) days of receipt of this Order, the City shall submit to the EPA, with a copy to KDHE, a written plan and schedule, including frequency, for providing for additional monitoring to determine compliance with the City's permitted effluent limitations. The Monitoring Plan shall describe in detail monitoring of both influent and effluent

flow volume on a monthly basis as a minimum and adequate in-system monitoring to be installed to determine the sources of suspected slug loadings impacting the facility.

33. After review of the information submitted by Respondent pursuant to the above Paragraphs, the 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.

34. The City shall at all times comply with requirements established by the State of Kansas regarding the repair, construction, and operation of facilities associated with the City's POTW, including, but not limited to, any requirements for work to be performed by certified or licensed professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable state requirements.

#### **Submissions**

35. Reporting to the EPA and KDHE: In addition to the submittals required by Paragraphs 30 through 32 above, the City shall submit to the 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 April 28 and October 28, until termination of this Order pursuant to Paragraph 47 below; the first report is due April 28, 2016. These reports shall include, at a minimum:

- a. Compliance Plan Progress. Until submittal of the written certification submitted pursuant to Paragraph 31, each report shall include a detailed update on the progress of the Compliance Plan, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period; and
- b. Discharge Monitoring Reports. Each report submitted to the EPA shall include a copy of all Monthly Discharge Monitoring Reports for that reporting period, signed and certified as required by the regulations at 40 C.F.R. § 122.22 and by Paragraph 1.B. of the Standard Conditions section of the City's NPDES Permit. The copy of the semi-annual report submitted to KDHE does not need to include a copy of any Discharge Monitoring Reports previously submitted to KDHE.

36. Consistent with the City's NPDES Permit, Standard Condition 16, the City acknowledges that reports, as described in Paragraph 35 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.conwayspringskc.com](http://www.conwayspringskc.com), information describing a violation of its NPDES Permit effluent limitations event within 24 hours of knowledge of the event.

37. All submissions by the City to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official:

I certify that the City of Conway Springs has complied with all the applicable requirements of the Order for Compliance. I also 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 violations.

38. All documents required to be submitted to the EPA by this Order, shall, whenever possible, be submitted electronically to:

dillard.wayne@epa.gov

Documents that cannot be submitted electronically shall be submitted to:

Wayne Dillard, P.E. or his successor  
Environmental Engineer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

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

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

## **General Provisions**

### **Reservation of Rights**

40. 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 Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. The EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

41. With respect to matters not addressed in this Order, the 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.

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.

### **Access and Requests for Information**

43. 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**

44. 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**

45. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by EPA with written notice to Respondent, without further formal amendment to the Order. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.



**Effective Date**

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


**Termination**

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

**Signatories**

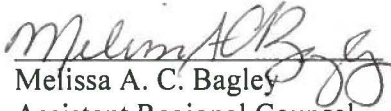
48. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

**For Respondent, the City of Conway Springs, Kansas:**

  
The Honorable Daniel Pettegrew  
Mayor, City of Conway Springs  
208 West Spring Avenue  
Conway Springs, Kansas 67031

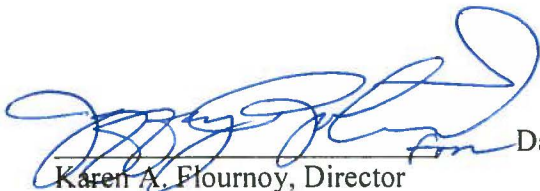
Date: 12/3/15

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



Date: 12/8/15

Melissa A. C. Bagley  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 7



Date: 12/8/15

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

CERTIFICATE OF SERVICE

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

The Honorable Daniel Pettegrew  
Mayor, City of Conway Springs  
208 West Spring Avenue  
Conway Springs, Kansas 67031

and by regular mail to:

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

12/9/15

Date

Kathy Robinson