

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
THE CITY OF PARSONS, KANSAS) Docket No. CWA-07-2017-0014
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
) ON CONSENT
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
_____)

I. Preliminary Statement

1. This Administrative Order for Compliance on Consent (Order on Consent) is issued by the U.S. Environmental Protection Agency (EPA) 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)(3), as amended. This authority has been delegated by the Administrator of 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, the city of Parsons, Kansas (hereafter "Respondent" or "the City"), is and was at all relevant times a municipality organized under the laws of the state of Kansas.

3. EPA, together with the Respondent (hereafter collectively referred to as the "Parties"), 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 Respondent's alleged noncompliance with the CWA and violation of its National Pollutant Discharge Elimination System (NPDES) permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order on Consent, Respondent: (1) consents to and agrees not to contest 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 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.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by EPA as set forth in this Order on Consent, except that Respondent admits the jurisdictional allegations herein.

II. Statutory and Regulatory Framework

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to navigable waters of the United States, except with the authorization of, and in compliance with, *inter alia*, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

8. 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.

9. 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 the CWA.

III. EPA's General Allegations

10. The city of Parsons is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant, Respondent was, and still is, 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.

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

13. 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.

14. 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.*

15. 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.

16. 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 differ from the 2008 permit;

** Milligrams per Liter;

*** Colony count per 100 milliliters.

17. 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.

18. 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.

19. 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.

20. On or about April 18 through 21, 2016, an EPA representative 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.

21. 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.

IV. EPA's Findings

22. The facts stated in paragraphs 1 through 21 above, are hereby incorporated by reference.

**Count 1
Unpermitted Diversions and Discharges**

23. 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.

24. 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.

25. 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.

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

27. 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 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**

28. Part A of the City's Permit establishes effluent limitations for the permitted discharge outfall, as described in Paragraph 16 above.

29. 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.

c. *E. coli*

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

30. 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 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

31. 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.

32. 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.

33. 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.

34. 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.

V. Order for Compliance

35. This Order supersedes the Findings of Violation and Order for Compliance issued by EPA on or about February 2, 2012, Docket No. CWA-07-2012-0008, which terms of compliance are hereby replaced by the provisions set forth below.

36. Based on the foregoing findings and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

37. 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 Permit.

38. Within 30 days of 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 compliance with the City's Permit, including addressing the issues identified in the Counts above, as well as the following specific issues:

- a. Promptly returning equipment to operation following maintenance or replacement, including keeping adequate quantities of spare parts and/or replacements on-site to ensure minimal out of service time for critical equipment;
- b. Properly monitoring and managing sludge levels in the clarifiers to maintain sludge levels within the established target range for proper operation, including addressing any shortages in manpower and equipment that may contribute to elevated sludge levels;
- c. Editing supervisory control and data acquisition (SCADA) software to the flow monitoring system in order to optimize waste activated sludge removal; and
- d. Ensuring influent sampling is representative of the actual WWTP influent.

39. *Compliance Plan:* The City shall continue and complete implementation of the comprehensive written plan submitted to and conditionally approved by EPA in May 2012, by the earliest date practicable, but no later than December 31, 2018.

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

41. 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 Kansas 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.

Semiannual Reporting

42. *Reporting to EPA and KDHE:* Beginning April 28, 2017, the City shall submit to EPA, with a copy to KDHE, semiannual 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 52 below. These reports shall include, at a minimum, the following information:

- a. A description of any permit violations occurring during the reporting period, the identified cause for each violation and the measures taken to prevent future recurrence of the violation;
- b. *Discharge Monitoring Reports* – Each report submitted to EPA shall include a copy of that reporting period's Monthly Discharge Monitoring Reports, 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 Permit. The copy of the semiannual report submitted to KDHE does not need to include a copy of any Discharge Monitoring Reports previously submitted to KDHE; and
- c. *Compliance Plan Progress* – Until submittal of the written certification stipulated in Paragraph 40, 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.

43. *Reporting Online:* Consistent with the City's Permit, Standard Condition 16, the City acknowledges that reports, as described in Paragraph 42 above, submitted to KDHE are available to the public. The City also acknowledges the necessity for transparency and accountability to the public. Therefore, within 30 days of this Order, the City will make available to the public via the City's website, www.parsonsk.com, any and all KDHE Wastewater Incident Report Forms filed by the City with KDHE as well as any Electronic Discharge Monitoring Reports which indicate a violation. The City shall post the KDHE Incident Report Form on its website within 15 days of the City sending the form to KDHE. The City shall post all Electronic Discharge

Monitoring Reports indicating a violation on its website within 15 days of sending a report indicating a violation has occurred. This shall be applicable to all future violations. Any violations that have occurred prior to this Order shall not be subject to this requirement.

Certification

44. All submissions made by the City to 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. § 122.22:

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 violations.

Submittals

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

dillard.wayne@epa.gov

Documents that cannot be submitted electronically to EPA 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

46. All documents required to be submitted to KDHE pursuant to this Order shall be submitted to:

Jaime Gaggero or her successor
Director, Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

VI. General Provisions

Effect of Compliance with the Terms of this Order

47. 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.

48. 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. 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. Issuance of this Order shall not be deemed an election by 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

49. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facilities, 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

50. 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.

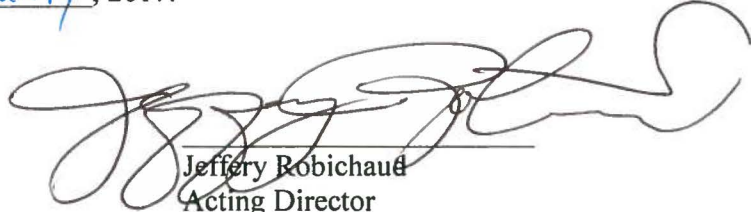
Effective Date

51. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.

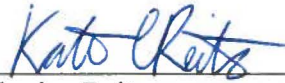
Termination

52. 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.

Issued this 16 day of February, 2017.

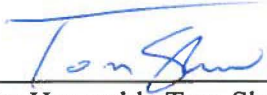
A large, stylized handwritten signature in black ink, appearing to read 'Jeffery Robichaud', written over a horizontal line.

Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

A handwritten signature in blue ink, appearing to read 'Katherine Reitz', written over a horizontal line.

Katherine Reitz
Attorney Advisor
Office of Regional Counsel

FOR THE 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

Date: 2/6/17

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 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 Administrative Order for Compliance on Consent by first class mail to:

The Honorable Tom Shaw
Mayor, City of Parsons
112 South 17th Street
Parsons, Kansas 67357-3304

and via first class mail to:

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

3/16/17
Date


Signature