

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION 7

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
 )  
THE CITY OF HOISINGTON, KANSAS, )  
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 )  
Respondent, )  
 )  
 )  
 )  
 )  
Proceeding under Sections 308(a) and )  
309(a)(3) of the Clean Water Act, )  
33 U.S.C. §§ 1318(a) and 1319(a)(3) )  
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Docket No. CWA-07-2013-0064

ADMINISTRATIVE ORDER FOR  
COMPLIANCE ON CONSENT

**Preliminary Statement**

1. This Administrative Order for Compliance on Consent (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to the city of Hoisington, Kansas (“City” or “Respondent”), pursuant to the authority vested in the Administrator of 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 redelegated by the Administrator 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. 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 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.

### **Statutory and Regulatory Framework**

5. 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 an NPDES permit issued pursuant to that Section.

6. 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.

7. 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, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. 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.

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, 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.

### **EPA Findings**

#### **Findings of Fact and Law**

10. The City of Hoisington is a political subdivision of the state organized under the laws of Kansas, and as such is a "person" for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all relevant times, the City has owned and operated a three-cell stabilization lagoon system (the wastewater treatment facility or “WWTF”) and its associated sewer collection and transmission systems, which receive and treat wastewater from residential and commercial connections within Hoisington, Kansas, and which together are a Publicly Owned Treatment Works (“POTW”), as defined by 40 C.F.R. § 403.3(q).

12. The City’s POTW discharges to an unnamed tributary of Blood Creek, which then flows into the Cheyenne Bottoms wetland, which are “navigable waters” and “waters 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.

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

14. 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.

15. 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.

16. KDHE issued NPDES Permit No. KS0022454 to the City for discharges from its POTW to the unnamed tributary to Blood Creek. The NPDES permit (hereafter “2007 NPDES permit”) became effective August 1, 2007, and expired July 31, 2012.

17. KDHE reissued NPDES Permit No. KS0022454 to the City for discharges from its POTW to the unnamed tributary to Blood Creek. The reissued NPDES permit (hereafter “2012 NPDES permit”) became effective October 1, 2012, and will expire June 30, 2017.

18. On July 15-17, 2013, 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 the City’s WWTF influent and, because the WWTF was not discharging, from lagoon cell #3 near the effluent discharge structure; reviewed the City’s records related to the NPDES permits; and observed the WWTF and the receiving stream to which Outfall 001 discharges. After the inspection, the inspector was copied on correspondence from the Kansas Rural Water Association to the City related to WWTF system performance. The EPA inspector’s observations included, but were not limited to, the following:

- a. operational and maintenance problems at the WWTF, including:

- i. sludge accumulation that was impacting treatment effectiveness, as sludge has never been removed from the lagoons despite the Kansas Rural Water Association's 1998 sludge profile, which found that the average sludge accumulation at that time was 19 inches – the equivalent of 32 percent capacity reduction – in the primary cell;
  - ii. the facility was routing flow through lagoons in a manner that short-circuited portions of cells 1 and 2, limiting their ability to effectively treat wastewater; and
  - iii. the concrete lining was broken or severely cracked in at least six locations around the perimeter of lagoon cells 2 and 3;
- b. exceedance of permitted effluent limits for 5-day biochemical oxygen demand (“BOD”) and total suspended solids (“TSS”);
  - c. lack of monitoring records, including discharge monitoring reports; and
  - d. failure to submit required monitoring reports to KDHE.

#### Findings of Violation

20. The facts stated in Paragraphs 10 through 19, above, are herein incorporated.

#### Failure to Comply with Effluent Limitations

21. The City's NPDES permit authorizes the City to discharge from the WWTF in accordance with the effluent limitations and monitoring requirements set forth in the permit. Part A, the Effluent Limitations and Monitoring Requirements section of the City's 2007 and 2012 NPDES permits, establishes effluent limitations for Outfall 001, including the following limitations which are in both permits:

- a. BOD
  - i. effluent limitations for Outfall 001A1 - a weekly average concentration limitation of 45 milligrams per Liter (“mg/L”), a monthly average concentration limitation of 30 mg/L, and compliance with a removal efficiency of 85%
  - ii. monitoring frequency - once quarterly for the 2007 NPDES permit, and once monthly starting with the 2012 NPDES permit

b. TSS

- i. effluent limitations for Outfall 001A1 - a weekly average concentration limitation of 120 mg/L, and a monthly average concentration limitation of 80 mg/L
- ii. monitoring frequency - once quarterly for the 2007 NPDES permit, and once monthly starting with the 2012 NPDES permit.

22. The EPA inspection referenced in Paragraph 18, above, and review of the City's monitoring reports submitted to KDHE, revealed that the City discharged wastewater from Outfall 001 containing concentrations of BOD and TSS in excess of its permitted weekly and monthly average concentration limitations for those parameters, and that the City failed to meet the removal efficiency for BOD, including the following:

a. BOD

- i. the City discharged concentrations of BOD in excess of the NPDES permits' weekly average concentration limitation during the first quarter of 2011;
- ii. the City discharged concentrations of BOD in excess of the NPDES permits' monthly average concentration limitation during the first quarter of 2010, the first quarter of 2011, March 2013, and April 2013;
- iii. the City did not achieve the NPDES permits' 85% removal efficiency requirement for BOD during the first, second, and third quarters of 2010, the first and second quarters of 2011, and during the month of March 2013;

b. TSS

- i. the City discharged concentrations of TSS in excess of the NPDES permits' weekly average concentration limitation during the first quarter of 2009, the third quarter of 2011, and March 2013;
- ii. the City discharged concentrations of TSS in excess of the NPDES permits' monthly average concentration limitation during the first and second quarters of 2009, the second and third quarters of 2010, the second and third quarters of 2011, the second quarter of 2012, and February, March, and April 2013.

23. As a result of the City's failure to comply with the effluent limitations of its NPDES permit, EPA finds that the City is in a state of noncompliance with the requirements of Part A of its 2012 NPDES permit.

24. Each of the City's discharges described in Paragraph 22 constitutes a violation of the terms and conditions of the City's 2007 or 2012 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).

25. 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, and considering further that the City may undertake to improve the operational conditions of its WWTF by performing a sludge profile, removing excess sludge from the lagoons, and rerouting piping to prevent short-circuiting of wastewater through the lagoons in order to comply with the effluent limitations for BOD and TSS and the removal efficiency for BOD, EPA finds that it is reasonable for the City to comply with the requirements of Part A of its 2012 NPDES permit by no later than October 31, 2015.

#### Failure to Comply with Monitoring Requirements

26. Part A, the Effluent Limitations and Monitoring Requirements section of the City's 2007 NPDES permit, establishes monitoring requirements for the effluent leaving the WWTF, including the requirement to monitor for BOD, TSS, pH, ammonia, fecal coliform, *E. coli*, chlorides and sulfates once per quarter using a grab sample. The same section of the City's 2012 NPDES permit establishes the requirement to monitor for BOD, TSS, pH, ammonia, and *E. coli* once per month using a grab sample. The 2007 and 2012 NPDES permits require the City to submit monitoring reports to KDHE for each monitoring period, even if no discharge occurs during the monitoring period.

27. The EPA inspection referenced in Paragraph 18, above, revealed that the City failed to report influent and effluent parameters to KDHE, and may not have monitored those parameters at all, during the third quarter of 2009, the fourth quarter of 2011, the first quarter of 2012, and the months of October and November 2012.

28. As a result of the City's continuing failures to comply with the monitoring requirements of its 2007 and 2012 NPDES permits, EPA finds that the City is in a state of noncompliance with the requirements of Part A and Paragraph 4 of the Standard Conditions of its 2012 NPDES permit.

29. Each of the City's failures particularly described in Paragraph 27 constitutes a violation of the terms and conditions of the City's 2007 or 2012 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).

30. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), having taken into account the seriousness of the violations, and considering further that the City may undertake to implement administrative procedures to ensure compliance with the influent and effluent monitoring requirements, EPA finds that 30 days is a reasonable time for the City to comply with the monitoring requirements of Part A and the Standard Conditions of its 2012 NPDES permit.

#### Failure to Retain Records

31. Part A, the Standard Conditions section of the City's 2012 NPDES permit, requires the City to comply with the attached Standard Conditions dated August 1, 2010. Paragraph 15 of the Standard Conditions, titled "Records Retention," requires that unless otherwise specified, all records and information resulting from the monitoring activities required by this permit shall be retained for a minimum of three years. Paragraph B, the Standard Conditions section of the City's 2007 NPDES permit, requires the City to comply with the attached Standard Conditions dated August 1, 1996, which contain the same records retention requirement in Paragraph 5.

32. The EPA inspection referenced in Paragraph 18, above, revealed that the City failed to retain discharge monitoring reports for the first quarter of 2011 and for the month of June 2013.

33. As a result of the City's failure to meet the records retention requirements of its 2007 and 2012 NPDES permits, EPA finds that the City is in a state of noncompliance with the requirements of Paragraph 15 of the Standard Conditions of its 2012 NPDES permit.

34. Each of the City's failures particularly described in Paragraph 32 constitutes a violation of the terms and conditions of the City's 2007 or 2012 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).

35. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), having taken into account the seriousness of the violations, and considering further that the City may undertake to implement a recordkeeping system in order to comply with the records retention requirements, EPA finds that 30 days is a reasonable time for the City to comply with Paragraph 15 of the Standard Conditions of its 2012 NPDES permit.

#### Order for Compliance on Consent

Based on the FINDINGS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), EPA hereby ORDERS, and Respondent hereby AGREES to take, the actions described below:

36. Immediately upon the issuance of this Order, the City shall commence efforts to identify and implement all necessary actions to correct the deficiencies cited above in order to comply with the conditions and limitations of its NPDES permit, consistent with the actions required pursuant to Paragraphs 37 through 39.

37. *Reporting to EPA and KDHE.* Respondent shall submit to EPA, with a copy to KDHE, the following documentation describing the actions Respondent has taken to comply with the terms of this Order:

- a. *Treatment system study and selection of remedies.* Within 300 days of the effective date of this Order, Respondent shall complete a study of its wastewater system and submit a report describing the results of the study. The report shall identify specific remedies that Respondent has selected to address, and prevent recurrence of, the effluent violations cited in Paragraph 22. EPA will review the treatment system study report and may, within 45 days of receipt, provide Respondent comments on the report.
- b. *Compliance Plan.* Within 365 days of the effective date of this Order, Respondent shall submit a plan identifying the remedies selected to achieve compliance with its permitted effluent limitations and describing milestones for completion of the remedies, including detailed timeframes. If sludge removal is required to remedy the alleged violations, Respondent shall include in the Compliance Plan the steps and a schedule for such sludge removal and disposition in accordance with Section D, Supplemental Conditions, Paragraph 1 of Respondent's 2012 NPDES permit. EPA will review the Compliance Plan and may, within 45 days of receipt, provide Respondent comments on the Plan.
- c. *Monitoring and Recordkeeping.* Within 60 days of the effective date of this Order, the City shall submit a report describing the procedures implemented by the City to ensure compliance with the requirements of the City's 2012 NPDES permit to monitor and report the influent and effluent parameters, to follow monitoring procedures, and to properly retain records.
- d. *Monthly Monitoring Reports.* Beginning with the January 2014 reporting period, and continuing until this Order is terminated, Respondent shall submit to EPA copies of the monthly monitoring reports that are required to be sent to KDHE, signed and certified as required by the regulations at 40 C.F.R. § 122.22. The monthly monitoring reports are due to EPA on a quarterly basis: the reports for January-March are due on April 28; those for April-June, on July 28; those for July-September, on October 28; and those for October-December, on January 28.



38. After review of the information submitted by Respondent pursuant to Paragraph 37, 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.

39. By October 31, 2015, Respondent shall complete the implementation of all necessary remedies to correct the deficiencies cited above and shall maintain compliance with the conditions and limitations of its NPDES permit.

- a. If during implementation of this Order, new information becomes available showing that the scope and complexity of the work necessary to return to compliance is significantly greater than originally anticipated, and that it will be technically impracticable to meet the completion date despite use of best efforts by the City, or that despite the City's best efforts, the City is unable to obtain necessary financing to complete the project by the required date, Respondent may submit to EPA a written request for an extension of this completion date in accordance with the modification provisions of Paragraph 50. Such a request must be submitted to EPA as soon as possible after the City has reason to believe a condition exists that warrants an extension of the compliance date, but no later than 30 days prior to the completion date. The request shall describe the new information that is the basis for the extension request, the reasons why Respondent believes it is technically impracticable or financially unable to meet the original completion date, and a proposed alternative completion date.
- b. Within 30 days following the completion date, Respondent shall submit to EPA a report explaining and documenting all actions completed pursuant to the Compliance Plan as well as any other actions taken to ensure compliance with permitted effluent limitations.

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

*I certify that the City of Hoisington has complied with all the applicable requirements of the Order for Compliance on Consent. 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.*

41. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Michael Boeglin or his successor  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

42. 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**

43. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, as authorized by 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 Consent on subsequent actions by the EPA or the State and with respect to citizen suits.

44. 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.

45. 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.

46. Subject to the limitations of Paragraph 4, 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.

47. 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**

48. 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**

49. 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**

50. At EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's decision whether to grant an extension shall be timely rendered and shall not be unreasonably withheld. 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**

51. 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**

52. This Order on Consent shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. The City may petition the EPA to terminate this Order on Consent upon correction of the deficiencies identified by this Order on Consent

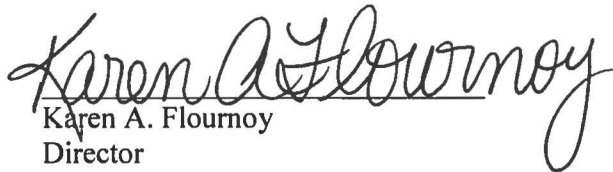
and demonstrated compliance with the terms of its NPDES permit. The EPA's decision to terminate this Order on Consent will be timely rendered and will not be unreasonably withheld.

**Signatories**

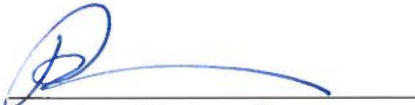
53. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

**For the Complainant, United States Environmental Protection Agency, Region 7:**

Issued this date: 7th day of Jan. 2014



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



Patricia Gillispie Miller  
Senior Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 7

**For the Respondent, City of Hoisington, Kansas:**

Clayton Williamson      12/27/13  
Signature    Date

CLAYTON WILLIAMSON  
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, 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 Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Clayton Williamson  
Mayor, City of Hoisington  
109 East 1<sup>st</sup> Street  
P.O. Box 418  
Hoisington, Kansas 67544,

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.

1/8/14  
Date

Kathy Robinson