

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

)

) Docket No. CWA-07-2012-0012

)

THE CITY OF OSAGE CITY, KANSAS

)

)

) ADMINISTRATIVE ORDER ON CONSENT

) FOR COMPLIANCE

Respondent,

)

)

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Proceedings under Section 309(a)(3)

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of the Clean Water Act,

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33 U.S.C. § 1319(a)

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### **Preliminary Statement**

1. This Administrative Order on Consent (Order) is issued by the United States Environmental Protection Agency, Region 7 (EPA), pursuant to Section 309(a)(3) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(a)(3), upon consent by the City of Osage, Kansas ("City" or "Respondent"). This authority has been delegated by the Administrator to the Regional Administrator, of the Environmental Protection Agency ("EPA"), Region 7, as redelegated to the Director of Region 7's Water, Wetlands, and Pesticides Division. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes EPA to issue administrative orders to require persons to take those actions necessary to eliminate non-compliance with the terms of the CWA.

2. The city of Osage, Kansas is a political subdivision of the state of Kansas, and is located in south central Kansas.

3. This Order addresses discharges of pollutants by Respondent into the waters of the United States in violation of its National Pollutant Discharge Elimination System ("NPDES") permit (NPDES Permit No. KS0022675). 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 claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

5. The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the EPA, by Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

### **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 an 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, 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 NPDES program in Kansas pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding. 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 Salt 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 granted NPDES Permit No. KS0022675 to Respondent for discharges from its POTW to Salt Creek. The permit became effective July 1, 2009, with an expiration date of June 30, 2014 (“2009 Permit”).

17. The 2009 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 0.295 million gallons per day (“MGD”). The POTW does not

measure influent to the POTW, but the City estimates an average influent flow of 239,000 gpd. The City's estimates of influent are based on the amount of potable water used by citizens and does not include any estimate of inflow and/or infiltration from groundwater.

18. Standard Condition 9 of the City's NPDES permit states bypasses are prohibited unless there are no feasible alternatives to the bypass.

19. On August 27, 2009, KDHE inspected the POTW and documented the facility needed to address and eliminate sources of inflow and infiltration ("I&I") in order to decrease the number of bypasses. As of the date of the KDHE 2009 inspection, the City had reported eight bypasses in 2008 and 19 in 2009.

20. On May 16 – 18, 2011, 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.

21. 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 inspector's observations included, but were not limited to:

- a. for seven of the ten quarterly reporting period Discharge Monitoring Reports ("DMRs") reviewed by the inspector, the required 85 percent removal efficiency for BOD (Biochemical Oxygen Demand) contained in the NPDES permit was not met;
- b. sludge within the lagoons had not been removed since construction in 1988 (23 years); and
- c. the City's lift station at 13<sup>th</sup> and E Streets has a constructed overflow with a valve that is, according to a City representative, opened fairly often during wet weather to prevent basement backups and reported to KDHE as "bypasses." The reported discharges totaled nineteen (19) times between April 2009 and February 2011, with an average estimated volume of 113,000 gallons and a maximum estimated volume of 233,000 gallons.

#### **Findings of Violation**

22. The facts stated in Paragraphs 11 through 21, above, are hereby incorporated by reference.

**Count I  
Violation of Numeric Limits**

23. 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. BOD monitoring – once per quarter (January – March, April – June, July – September, and October – December).

24. The City has failed to meet the removal efficiencies for BOD required by the City's NPDES permit, for the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2009, the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarters of 2010, and the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2011.

25. The City's failure to comply with the effluent limitations of the 2009 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  
Prohibited Discharges**

26. The Effluent Limits and Monitoring Requirements section of the City's NPDES permit authorizes the City to discharge only from outfalls specified in the NPDES permit and only Outfall 001A1, the treatment plant discharge structure, is a permitted outfall described in the permit.

27. The EPA inspection revealed that the City has often discharged through a valve-controlled constructed overflow from the lift station at 13<sup>th</sup> and E Streets during wet weather. Discharges at this location were reported a total of thirteen (13) times, with an average estimated volume of 123,725 gallons, during the period between September 2009 and February 2011. Each report for these discharges submitted to KDHE lists as the cause of discharge "Excessive Rainfall, Snow Melt" and states, as the corrective action, that the "collection system needs upgrading and will result in a multi-year project."

28. The City's discharges from the constructed overflow at 13<sup>th</sup> and E Streets are violations 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 III**  
**Failure to Properly Operate and Maintain POTW**

29. Condition #8 of the Standard Conditions section of the City's NPDES permit, titled "Facilities Operation," requires all treatment, collection, control systems or facilities to be maintained in good working order and operated efficiently and effectively.

30. The proper operation and maintenance requirements are set forth at 40 C.F.R. § 122.41(e).

31. The EPA inspection revealed that the City failed to properly operate and maintain the wastewater collection system by failing to address significant I&I in the collection system, for which the City has in fact identified the need for corrective measures, that has contributed to the numerous failures to comply with the BOD percentage removal requirement in the City's NPDES permit.

32. The City's failure to properly operate and maintain the wastewater collection system has resulted in prohibited discharges from the lift station at 13<sup>th</sup> and E Streets during wet weather.

33. The City's failure to properly operate and maintain the wastewater treatment facility is a violation of 40 C.F.R. § 122.41(e) and 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**

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:

34. Upon receipt of this Order, the City shall identify and implement actions to correct deficiencies cited above. Implementation shall occur sequentially, as agreed upon in the Compliance Plan (Line Item No. 35).

35. *Compliance Plan.* Within 120 days of the effective date of this Order, the City shall submit to EPA, with a copy to KDHE, a comprehensive written plan (the "Compliance Plan") for mitigating unpermitted overflows and achieving compliance with the City's permitted effluent limitations at the wastewater treatment facility. The Compliance Plan shall be prepared in accordance with Attachment 1. The Compliance Plan shall include a proposed sequential milestone schedule for completing Sewer System Evaluation Survey (SSES),

Recommended Plan of Action, and adoption of a Capital Improvement Program with a final completion of the survey and the development of the plan of action and adoption of a Capital Improvement Program to be done as expeditiously as possible and no later than December 31, 2014. Schedule for implementation of identified corrective measures shall be established as part of the final SSES report submitted to EPA as described in item 4 and Item 5 of Attachment No. 1.

36. *Compliance Plan Completion.* Within 30 days of completion of the final scheduled 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.

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

38. 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**

39. Reporting to EPA and KDHE: In addition to the submittals required by Paragraphs 35 through 38 above, the City shall submit to 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 50 below; the first report is due October 28, 2012. These reports shall include, at a minimum:

- a. Operation and Maintenance. The initial report shall include a written description of the actions the City has taken to identify and abate collection system I&I since January 1, 2008;
- b. Compliance Plan Progress. Until submittal of the written certification submitted pursuant to Paragraph 36, 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

- c. Discharge Monitoring Reports. Each report submitted to 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.

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 Osage 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.

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

Wayne Dillard, P.E. or his successor  
Environmental Engineer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

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  
Interim 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. 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. 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. Subject to the limitations of Paragraph 4, above, Respondent reserves the right to assert all available defenses against allegations by EPA that it has violated the terms of this Order in any subsequent action by EPA to enforce this Order.

44. 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.

45. 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.

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

46. 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**

47. 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**

48. 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. 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**

49. 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**

50. 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 Respondent has demonstrated compliance with all applicable terms of its NPDES permit.

**Signatories**

51. 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 Osage, Kansas:**

  
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The Honorable Quintin Robert  
Mayor, City of Osage City  
P.O. Box 250  
201 South 5<sup>th</sup>  
Osage City, Kansas 66523

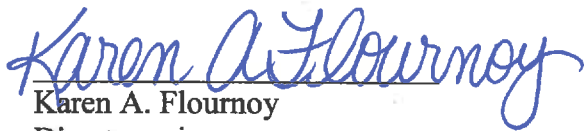
Date: 5-31-2012

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



Howard Bunch  
Senior Assistant Regional Counsel  
Office of Regional Counsel

Issued this day 8th, of June, 2012



Karen A. Flourmoy  
Director  
Water, Wetlands and Pesticides Division

**ATTACHMENT 1:**

1. **Statement of Purpose:** In order to analyze and determine what actions are required to address prohibited discharges/bypasses caused by wet weather impacts on a sewer system, EPA has developed guidance for performing Sewer System Evaluation Surveys (SSES). To address the documented incidents of illegal discharges/bypasses within the city of Osage, Kansas sewer collection system, the city of Osage is required, and hereby agrees, pursuant to the attached Order to develop a Compliance Plan and implement the corrective actions identified therein. The City's Compliance Plan shall include, but not necessarily be limited to, performance of a SSES as described below and in a manner consistent with EPA guidance.

2. **Sewer System Evaluation Survey - Planning.** The Compliance Plan shall include a comprehensive written plan and schedule for performing a complete SSES to identify collection system improvements required to reduce peak wet weather flows at the wastewater treatment facility, including work required to eliminate overflows from the 13th and E Streets lift station constructed overflow, as expeditiously as possible. The Compliance Plan and schedule shall include as a minimum:

- a. a summary of the work completed to date in addressing I&I; and
- b. a detailed scope of work and schedule for performing the SSES.

3. **Sewer System Evaluation Survey - Performance.** Upon EPA's approval of the proposed schedule (and receipt of EPA comments) on the proposed SSES, the City shall commence performance of the SSES. Within 10 days of commencing such work, the City shall submit a written certification stating the date such performance commenced.

4. Within 30 days of completion of the work described in the SSES, the City shall submit a final SSES report to EPA for review. The final SSES Report shall include:

- a. a detailed description of investigations conducted and alternatives considered for correcting collection system I&I;
- b. specific I&I corrective measures the City has taken and/or proposes to take; and
- c. a detailed schedule (begin design, provide financing, start construction, complete construction, verify I&I reductions, eliminate lift station overflow, etc.) for each proposed project or action to implement the corrective measures.

5. **Compliance Plan Implementation.** Within 30 days receipt of EPA's approval of the proposed schedule set forth in final SSES report to EPA for review, the City shall begin implementation of the identified corrective measures in accordance with the approved Compliance Plan and SSES schedules and submit written reports of commencement and implementation of the work as required by Paragraph 39 of the Order.

6. **Sewer System Corrective Measures Completion.** Within 30 days of completion of the final scheduled corrective action, the City shall submit a written certification that all City actions required by this order have been completed.

**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, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

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 Quintin Robert  
Mayor, City of Osage City  
P.O. Box 250  
201 South 5<sup>th</sup>  
Osage City, Kansas 66523

and by regular mail to:

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

Date

6/8/2012

