

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

2012 FEB -2 AM 10:37

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. CWA-07-2012-0008
)
THE CITY OF PARSONS, KANSAS,)
)
)
) FINDINGS OF VIOLATION and
) ORDER FOR COMPLIANCE
)
Respondent,)
)
)
)
Proceedings under Sections 308(a) and)
309(a)(3) of the Clean Water Act,)
33 U.S.C. §§ 1318(a) and 1319(a)(3))
_____)

Preliminary Statement

1. The following FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Sections 308(a) and 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 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.

2. Respondent, the City of Parsons (hereafter "Respondent" or "the City"), operates a Publicly Owned Treatment Works ("POTW") in the State of Kansas that treats domestic, industrial, and commercial wastewater.

Statutory and Regulatory Framework

3. 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.

4. 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.

5. 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.

6. 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.

7. Section 405(a) of the CWA, 33 U.S.C. § 1345(a), prohibits the disposal of sewage sludge resulting from the operation of a treatment works in any case where the disposal would result in any pollutant from such sewage sludge entering a navigable water, except in accordance with a permit issued under Section 402 of the CWA.

8. Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1), requires the Administrator to develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

9. Pursuant to Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1), EPA promulgated the regulations governing the Standards for the Use or Disposal of Sewage Sludge, set forth at 40 C.F.R. Part 503, and the State Sludge Management Program Regulations, set forth at 40 C.F.R. Part 501. These regulations establish general requirements, pollutant limits, management practices, and operational standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.

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, commercial and industrial sources.

13. The City's POTW discharges to the Neosho River via Labette Creek, which are both "navigable waters" 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. The City's POTW generates sewage sludge that the City applies to land using the City's equipment.

16. 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.

17. KDHE granted NPDES Permit No. KS0097560 (hereafter "NPDES permit") to the City for discharges from its POTW to Labette Creek. The NPDES permit became effective July 1, 2008, and will expire June 30, 2013.

18. On February 14 through 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.

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 inspector's observations included, but were not limited to, the following:

- a. numerous instances of discharges from the influent pump station, the peak flow basin, and the sanitary sewer collection system, including during the EPA inspection;
- b. identification of areas the City believes are sources of significant infiltration and inflow ("I&I"), particularly the state hospital;
- c. the City did not begin reporting Total Phosphorus or Total Kjeldahl Nitrogen concentrations in the influent until September 2009, and has never monitored for copper on a monthly basis, as required by its NPDES permit;
- d. deep sludge levels in the clarification units that significantly exceeded the operator's goal sludge level;
- e. discharge through the outfall of sludge from the clarification units;

- f. annual sludge reports that did not accurately track cumulative pollutant loading;
- g. improper sewage sludge sample collection practices;
- h. the City has land applied sewage sludge containing arsenic concentrations in excess of the allowable ceiling concentration; and
- i. numerous instances of noncompliance with effluent limitations contained in the NPDES permit, including noncompliance identified through analysis of samples collected during the EPA inspection.

Findings of Violation

20. The facts stated in Paragraphs 11 through 19, above, are herein incorporated.

Unpermitted Discharge

21. Paragraph 9 of the Standard Conditions section of the City's NPDES permit prohibits any diversion from, or bypass of facilities necessary to maintain compliance with the permit, except under circumstances not applicable here.

22. Part A of the City's NPDES permit, which sets out effluent limitations and monitoring requirements, authorizes discharges from wastewater treatment facility outfalls as specified in the permit. Part A specifies identifies outfall 001AG, Influent to Treatment Plant, and authorizes discharges from outfall 001A1, Effluent at Composite Sampler.

23. The EPA inspector witnessed the discharge of untreated wastewater from an outfall not specified in the permit, which is plumbed from the overflow basins directly into Labette Creek, during the inspection referenced in Paragraph 18 above. Information obtained during the EPA inspection and review of the City's bypass reports revealed that the City has discharged more than 79.8 million gallons of untreated wastewater since March 2008 from the influent pump station, the overflow basins, and the sanitary sewer collection system.

24. Each discharge of pollutants from any location other than a permitted outfall is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Comply with Effluent Limitations & Monitoring Requirements

25. The City's NPDES permit authorizes the City to discharge from the wastewater treatment facility 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 NPDES permit, establishes effluent limitations and monitoring frequencies for Outfall 001A1, Effluent at Composite Sampler, including the following:

- a. biochemical oxygen demand (“BOD”)
 - i. effluent limitations - for November through April, a weekly average concentration limitation of 40 mg/L and a monthly average concentration limitation of 25 milligrams per Liter (“mg/L”); for May through October, a weekly average concentration limitation of 30 mg/L and a monthly average concentration limitation of 20 mg/L; and at all times, compliance with a removal efficiency of 85%
 - ii. monitoring frequency - once per week
- b. total suspended solids (“TSS”)
 - i. effluent limitations - a weekly average concentration limitation of 45 mg/L and a monthly average concentration limitation of 30 mg/L; and compliance with a removal efficiency of 85%
 - ii. monitoring frequency - once per week
- c. ammonia as nitrogen (N)
 - i. effluent limitations - a year-round daily maximum concentration limitation of 8.6 mg/L, and a monthly average concentration limitation ranging from 1.3 to 4.9 mg/L, depending on the month
 - ii. monitoring frequency - once per week
- d. E. coli
 - i. effluent limitations - for April through October, a monthly geometric average of 160 colonies/100 ml; for November through March, a monthly geometric average of 2,358 colonies/100 ml
 - ii. monitoring frequency - once per week.

26. The EPA inspection referenced in Paragraph 18, above, revealed that the City exceeded the NPDES permit’s weekly average concentration limitation for BOD, the weekly and monthly average concentration limitations for TSS, the monthly average concentration limitation for ammonia, and the monthly geometric average for E. coli; failed to meet the removal efficiencies for BOD and TSS; and failed to monitor BOD, TSS, and copper at the required frequencies, including the following:

a. BOD

- i. the City discharged concentrations of BOD in excess of the NPDES permit's weekly average limitation during August 2009 and May 2010;
- ii. the City did not achieve the NPDES permit's 85% removal efficiency requirement for BOD during the months of August 2009, January 2010, and May 2010;
- iii. the City failed to monitor the concentration of BOD at least once per week during March 2010;

b. TSS

- i. the City discharged concentrations of TSS in excess of the NPDES permit's weekly average limitation during August 2009 and January, February, and May 2010;
- ii. the City discharged concentrations of TSS in excess of the NPDES permit's monthly average limitation during August 2009 and January, February, and May 2010;
- iii. the City did not achieve the NPDES permit's 85% removal efficiency requirement for TSS during the months of August 2009 and January, February, and May 2010;
- iv. the City failed to monitor the concentration of TSS at least once per week during March 2010;

c. ammonia as N

- i. the City discharged concentrations of ammonia as N in excess of the NPDES permit's monthly limitations for the months of June and September 2008, and July and August 2009;

d. E. coli

- i. the City discharged concentrations of E. coli in excess of the NPDES permit's monthly geometric average for the months of June and September 2008, and May through August 2009.

27. Each failure to comply with the effluent limitations and monitoring requirements 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).

Notification of Noncompliance

28. Paragraph 7 of the Standard Conditions section of the City's NPDES permit requires that if for any reason the City does not comply with, or will be unable to comply with, any daily maximum or weekly average effluent limitations specified in the permit, the City shall notify KDHE in writing within five days of becoming aware of such condition.

29. The EPA inspection referenced in Paragraph 18, above, revealed that the City's practice was to submit the notifications to KDHE on a monthly basis, rather than within five days of becoming aware of exceedances of the daily maximum or weekly average permit limits.

30. The City's failure to comply with the notification of noncompliance requirement 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).

Land Application of Sludge

31. Part C of the City's NPDES permit, which sets forth the Supplemental Conditions, requires that sludge disposal shall be in accordance with the sludge regulations set forth at 40 C.F.R. Part 503.

32. The regulations at 40 C.F.R. § 503.13 set forth the pollutant limits for land application of sewage sludge. 40 C.F.R. § 503.13(a)(1) prohibits the application to land of bulk sewage sludge, if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant as set forth in Table I of § 503.13.

33. Table I of § 503.13 sets the ceiling concentration for arsenic at 75 milligrams per kilogram ("mg/kg") on a dry weight basis.

34. The EPA inspection referenced in Paragraph 18, above, revealed that the City applied sewage sludge containing arsenic concentrations in excess of the ceiling concentration to land between September 2010 and March 2011.

35. The City's application of sewage sludge to land in concentrations exceeding the ceiling concentration for arsenic is not in accordance with 40 C.F.R. § 503.13(a)(1), and therefore is a violation of the Supplemental 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) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described below:

36. 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.

37. 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 no bulk sewage sludge containing pollutants in excess of the ceiling concentrations listed in Table 1 of 40 C.F.R. § 503.13 is applied to land, sold, or given away in a bag or other container.

38. *Compliance Plan.* Within 90 days of receipt of this Order, the City shall submit to EPA, with a copy to KDHE, a comprehensive written plan for eliminating unpermitted overflows and achieving compliance with the City's permitted effluent limitations at the wastewater treatment facility (the "Compliance Plan"). The Compliance Plan shall describe in detail the specific actions to be taken or work to be completed, and why such actions or work are sufficient to eliminate unpermitted overflows and 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, 2017. EPA will review and may provide comments on the City's Compliance Plan.

39. *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.

40. 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

41. *Reporting to EPA and KDHE:* In addition to the submittals required by Paragraphs 37 through 39 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 53 below; the first report is due April 28, 2012. These reports shall include, at a minimum:

- a. Operation and Maintenance. The 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 stipulated in Paragraph 39, 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 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 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.

42. 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 Parsons 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.

43. 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.

44. 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

Opportunity to Confer

45. Respondent may, within seven days after the effective date of this Order, request a conference with EPA to discuss this Order.

46. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondent intends to comply with this Order. This conference shall not constitute an evidentiary hearing, and shall not constitute a proceeding to challenge this Order. Any such conference shall not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference shall be made. Respondent may appear in person or by an attorney or other representative at any conference held pursuant to Respondent's request hereunder.

47. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 43.

Effect of Compliance with the Terms of this Order

48. 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.

49. 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

50. 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

51. 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

52. 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

53. 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 the City has corrected the deficiencies identified by this Order and demonstrated compliance with the terms of its NPDES permit.

Issued this 2nd day of February, 2012.



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



Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel
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 Findings of Violation and Administrative Order 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 for Compliance by first class certified mail, return receipt requested, to:

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

and by first class mail to:

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

2-2-12
Date

