

FILED

February 2, 2026

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**U.S. EPA REGION 7
HEARING CLERK**

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
McPherson, Kansas) Docket No. CWA-07-2026-0072
)
)
Respondent) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE ON
) CONSENT
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order on Consent”) are made and issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division, with concurrence of the Regional Counsel.

2. Respondent is the city of McPherson, Kansas (“Respondent” or “the City”) and was at all relevant times a municipality organized under the laws of the state of Kansas.

3. The EPA, together with the Respondent 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 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 the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, (3) consents to electronic service and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations

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. Respondent agrees to electronic service of this Order at the following address: mikew@mpcity.com.

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, which provides that pollutants may be discharged 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. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States.”

9. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

10. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works (“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.

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

EPA’s General Allegations

12. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The city of McPherson, Kansas is and was at all times relevant to this action the owner and operator of the *McPherson Waste Water Treatment Facility* (hereafter “WWTF”) and the associated sewer systems, which receive and treat wastewater from residential and commercial connections within McPherson, Kansas which together are a POTW, as defined by 40 C.F.R. § 403.3(q).

14. The POTW discharges into Dry Turkey Creek a water of the United States.

15. Dry Turkey Creek is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

16. Discharges from Respondent’s POTW result in the addition of pollutants from a point source to navigable waters and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

17. Respondent’s discharge of pollutants requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

18. KDHE is not approved to administer a state authorized Pretreatment program in Kansas pursuant to Section 402 of the CWA and its implementing regulations. Consequently, in Kansas, EPA remains the Approval Authority as defined by 40 C.F.R. § 403.3(c).

19. Respondent’s Pretreatment Program was approved by EPA on or about October 24, 1983. Respondent’s approved Pretreatment Program sets forth procedures for implementing requirements for regulating industrial discharges to Respondent’s POTW, specifically requirements set forth at 40 C.F.R. 403.8.

20. On or around January 15, 1991, EPA approved Respondent’s Enforcement Response Plan as a modification to the Respondent’s Pretreatment Program.

21. On or about October 1, 2021, NPDES Permit No. KS0036196 was issued to Respondent by the KDHE pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The Permit expires on May 31, 2025. The city’s NPDES contains at paragraph F. PRETREATMENT PROGRAM, that requires the city to “continue to implement and administer the Pretreatment Program in accordance with the General Pretreatment Regulations 40 C.F.R. Part 403.

22. On or about July 11-12, 2024, EPA performed a Pretreatment Program Audit of the City’s pretreatment implementation activities. During the Audit, EPA identified program deficiencies. A report documenting the deficiencies was submitted to KDHE and the City on or about August 21, 2024.

23. Respondent’s NPDES permit sets effluent limitations and monitoring requirements for pollutants, including but not limited to, five-day Carbonaceous Biological Oxygen Demand (“CBOD”), Total Suspended Solids (“TSS”), Ammonia, E. Coli and requires monitoring for these and other parameters.

EPA’s Findings of Violation

Count 1

Failure to Comply with Pretreatment Requirements

24. The Paragraphs set forth above are re-alleged and incorporated herein by reference.

25. Based on EPA’s Inspection, and review of the Sewer Use Ordinance, Industrial Permits, and the Enforcement Response Plan, EPA has determined that the Respondent violated

its NPDES permit requirement to implement Respondent's approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403. EPA alleges Respondent has failed to implement its pretreatment program in at least the following ways:

- a. Respondent failed, in violation of 40 C.F.R. 403.8(f)(2)(v), to monitor Pfizer for Methylene Chloride-Amyl Acetate, Ethyl Acetate, Isopropyl Acetate for at least the past five years.
- b. Respondent failed to develop adequate local limits to prevent interference and pass through as required by 403.5(c) or demonstrate that they are not necessary per 403.8(f)(4).
- c. Respondent failed, as required by 40 C.F.R § 403.8 and 403.12, to incorporate all of the requirements of the streamline rule.
- d. Respondent failed, as required by 40 C.F.R. § 40 C.F.R. 403.8(f)(3): to ensure that the POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f) (1) and (2) of this section. The city has not designated sufficient resources to the pretreatment program.

26. Respondent's alleged failure to comply with the pretreatment program requirements, is a violation of the conditions and limitations of the NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Order for Compliance on Consent

27. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

28. Within one hundred and twenty (120) calendar days of receipt of this Order, Respondent shall provide the following to the EPA for review and approval:

- a. Proposed modifications to the City's Sewer Use Ordinance that address the revisions to the General Pretreatment Streamlining regulation and, if any are needed, provides any changes to its approved Pretreatment Program.
- b. A local limits analysis for all pollutants currently listed in the City's Local Limits established in 2000, any pollutants regulated by the Sludge Regulations, 40 C.F.R Part 503, and the pollutants significant for the City Industrial Users. The analysis shall follow the EPA's Local Limits Development Guidance, July 2004.
- c. Complete slug evaluations for each industrial user in accordance with 40 CFR § 403.8(f)(2)(vi).

29. The Respondent shall complete an evaluation of the resources necessary to implement the approved Pretreatment Program including Full-Time Employee hours and budget to determine if the Respondent satisfies the requirements of 40 C.F.R 403.8 (f)(3).

30. Each submittal made by the Respondent will be reviewed by the EPA and KDHE for completeness and sufficiency, and managed as follows:
- a. If the EPA and KDHE determines the submittal is complete and sufficient, the Respondent will be notified by the EPA to promptly submit the proposed revisions to the City's approved Pretreatment Program and the Sewer Use Ordinance.
 - b. If the EPA notifies the City that further revisions are needed, the City shall make such revisions and resubmit the proposed changes to the Pretreatment Program and Sewer Use Ordinance to the EPA and KDHE within thirty (30) calendar days of receipt of EPA's notice.
 - c. If the City believes it needs additional time to complete one or more of the requirements of this Order, the City shall submit a request by email to Beckett Nichols, Nichols.beckett@epa.gov, indicating the tasks for which more time is needed and the period of additional time requested. Any decision by the EPA to grant such request shall be in writing and delivered to the City by email.

Reports/Submissions

31. *Quarterly Reports.* In addition to the submittals required above, the City shall submit to the EPA quarterly reports describing the actions the City has taken to comply with the terms of this Order, including a description of activities completed, those scheduled for the next reporting period, milestones met during the reporting period, and Monthly Operating Reports for the quarter. These reports are due every three months beginning the 1st day of the first month following execution of this Order until termination of this Order as described, below.

32. *Submittals.* All documents required to be submitted to the EPA by this Order, including the certification statement in Paragraph below, shall be submitted by electronic mail to:

Beckett Nichols, Compliance Officer
Enforcement and Compliance Assurance Division, Water Branch
Nichols.beckett@epa.gov

33. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

34. All documents required to be submitted pursuant to this Order shall also be submitted by email to KDHE at steve.caspers@ks.gov or mailed to the address provided below:

Steve Caspers
Kansas Department of Health and Energy
1000 SW Jackson Street
Suite 420
Topeka, Kansas 66612

35. Each submission requirement 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.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

36. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

37. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the 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

38. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

39. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary 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

40. 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 the EPA.

Modification

41. Upon written request by Respondent, the EPA, in its sole discretion, may extend a compliance schedule and/or deadline. Any extension must be made by the EPA in writing, and without further 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 of this Order signed by each Party.

Termination

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

For the Complainant, U.S. Environmental Protection Agency:

Issued this _____ day of _____, 2026.

VEDA HAKAMI Digitally signed by
STOY VEDA HAKAMI STOY
Date: 2026.01.30
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Alyse Stoy
Acting Director
Enforcement and Compliance Assurance Division

ELIZABET Digitally signed by
H HUSTON ELIZABETH HUSTON
Date: 2026.01.29
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Elizabeth Huston
Office of Regional Counsel

For the Respondent, City of McPherson:

James Loving
Signature

1/26/26
Date

James Loving
Name

Mayor
Title

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency Region 7
R7_Hearing_Clerk_Filings@epa.gov

Representative(s) for Respondent:

Michael Wagner, Wastewater Superintendent: mikew@mpcity.com

Eric Duerksen, Public Works Director: ericd@mcpcity.com

Ann Elliott, attorney for Respondent ann@elliottlawks.com

Representatives for Complainant:

Elizabeth Huston
EPA Region 7 Office of Regional Counsel
huston.liz@epa.gov

Beckett Nichols
EPA Region 7 Enforcement and Compliance Assurance Division
Nichols.beckett@epa.gov

Date

SARAH
MORENO
Digitally signed by
SARAH MORENO
Date: 2026.02.02
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Signature