

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)	Docket No. CWA-07-2011-0048
)	
The City of Iola, Kansas)	
Respondent)	
)	
NPDES Permit No. KS0099414)	FINDINGS OF VIOLATION
)	AND ORDER FOR COMPLIANCE
)	
Proceedings under Section 309(a)(3))	
of the Clean Water Act, 33 U.S.C.)	
§ 1319(a)(3))	

I. Statutory Authority

1. The following FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a)(3), which authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division.

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Sections 307 and 402 of the Act, 33 U.S.C. §§ 1317 and 1342. Section 402 of the Act 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.

3. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. 40 C.F.R. Part 403 regulations control the introduction of pollutants by industrial users into POTWs which may pass through or interfere with treatment processes of such treatment works, or which may contaminate sewage sludge. Section 307(d) of the CWA states it shall be unlawful to operate any source in violation of any effective "effluent standard or prohibition or pretreatment standard."

4. 40 C.F.R. § 403.5(a) sets forth general prohibitions that users shall not introduce pollutants into a POTW which result in the "pass through" of pollutants through the POTW, or "interference" with the operations of the POTW.

5. 40 C.F.R. § 403.5(b) sets forth specific prohibitions that users shall not introduce pollutants into a POTW that exceed established criteria; including, but not limited to, the specific prohibition that a user shall not introduce any pollutants or wastewater with a pH less than 5.0 S.U. (Standard Units).

6. 40 C.F.R. § 403.8 sets forth the requirements for the development and implementation of a Pretreatment program by a POTW. This regulation requires POTWs with a Pretreatment program to identify "significant industrial users" (SIUs) and imposes additional compliance requirements on the POTW for such users.

7. 40 C.F.R. § 403.5(c) states that each POTW developing a POTW Pretreatment Program pursuant to 40 C.F.R. § 403.8 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs 40 C.F.R. §§ 403.5(a)(1) and (b), and that each POTW with an approved pretreatment program shall continue to develop these limits as necessary and to effectively enforce such limits.

8. A "Significant Industrial User" is defined by 40 C.F.R. § 403.3(t)(ii) as a contributing industry that has (1) a flow of 25,000 gallons or more per average workday, or (2) has an average daily flow or load greater than five percent (5%) of the flow or load carried by the POTW or (3) has significant impact on the POTW or the quality of the POTW's effluent.

II. General Allegations

9. The City of Iola, Kansas ("City" or "Respondent"), is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and owns and operates a publicly owned treatment works ("POTW") which treats both domestic and industrial wastewater.

10. The City's POTW, as described above, is a "point source" that discharges "pollutants" to the Neosho River which is a "navigable water," as defined by Section 502 of the Act, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the Act, 33 U.S.C. § 1251, et seq.

11. During all times relevant to this Order, the "Industrial Users" of the Iola Kansas POTW, as defined by 33 U.S.C. § 1362(18), have discharged non-domestic "pollutants," as defined by 33 U.S.C. § 1362(6), into the City's POTW.

12. On or about September 1, 2005, the Kansas Department of Health and Environment ("KDHE") reissued NPDES Permit No. KS0099414 to the City, pursuant to Section 402 of the Act, 33 U.S.C. § 1342 ("2005 NPDES permit"). On or about April 1, 2008, KDHE reissued the City's NPDES permit ("2008 NPDES permit"). The City's 2008 NPDES Permit expires on March 31, 2013.

13. The City's 2005 and 2008 NPDES permits contain (Paragraph C- PRETREATMENT PROGRAM), the requirement that the City "...implement and administer the Pretreatment Program in accordance with the General Pretreatment Regulations 40 C.F.R. Part 403."

14. 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.

15. 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).

16. The City's Pretreatment Program was approved by EPA on or about July 1, 1987. Respondent's approved Pretreatment Program sets forth procedures for implementing requirements for regulating industrial discharges to Respondent's POTW, and specifically incorporates the requirements set forth at 40 C.F.R. 403.8.

17. On or around January 2, 1991, EPA approved Respondent's Enforcement Response Plan ("ERP") as a modification to the Respondent's Pretreatment Program.

18. In September 2000, the City was issued an administrative compliance order by KDHE due to ongoing non-compliance with the Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) limitations in its NPDES permit. Initially, the City attempted to upgrade the POTW to address this non-compliance by construction of a "wetland" pilot treatment system. However, this wetland system ultimately failed to achieve compliance with the effective NPDES permit.

19. In April 2005, the City's consultant presented a draft report to the City documenting that the wetland pilot treatment system would not be able to treat the domestic and industrial wastewater to achieve compliance with the City's NPDES permit. The June 2005 final report documented that Russell Stover's Candies, Inc. ("RSC") was discharging over 25,000 gallons per day of wastewater to the POTW, and was contributing over 50% of the loadings of BOD and TSS to the POTW.

20. The City's September 2005 NPDES permit affirmatively states the City was not able to meet its permit limits, and the permit established a revised compliance schedule for the City to submit a plan for improvements to the POTW to KDHE by January 1, 2006; and required all planned improvements to the POTW to be completed by October 1, 2006.

21. By administrative order dated January 1, 2006, KDHE again found the City was in non-compliance with requirements of the effective NPDES permit and extended the compliance deadlines for completion of the upgrade to the POTW until October 1, 2007.

22. Sampling conducted by the City's consultant in February 2006 confirmed that RSC was discharging over 25,000 gallons per day, and was contributing over 47% loadings of BOD and 53% of loadings of TSS to the POTW.

23. The City's 2008 NPDES permit again extended the compliance schedule to upgrade the POTW, requiring completion of the upgrade by June 1, 2008. The City ultimately completed the upgrade to the POTW prior to June 2008.

24. Between 2003 and 2009, the City's studies and sampling of loadings from RSC document ongoing "slug" discharges by RSC to the POTW.

25. Prior to January 1, 2007, as the approved pretreatment Control Authority, the City had issued "categorical" pretreatment permits to the following industrial users that discharged wastewater to the City's POTW:

- a. Gates Rubber Company
- b. Haldex Brake Systems
- c. Precision Pump

26. Effective January 1, 2007, the City issued RSC a pretreatment permit as a SIU of the POTW. RSC's permit required semiannual reporting of discharges to the POTW, but did not establish limits for RSC for either BOD or TSS.

27. On or about June 17, 2008, EPA performed a Pretreatment Program Audit of the City's pretreatment implementation activities. During the Audit, EPA identified numerous program deficiencies, including the City's failure to develop limits for RSC. EPA also determined during its audit that the City personnel were not familiar with the City's approved Enforcement Response Plan and that City personnel were not trained or qualified to determine and report the compliance status of its Significant Industrial Users (SIUs). EPA's audit also documented discharges of wastewater from RSC to the POTW with a pH of less than 5.0 s.u, in violation of the specific prohibition of 40 C.F.R. 403.5(b) and the City's Sewer Use Ordinance. A copy of EPA's inspection report documenting these deficiencies was submitted to KDHE and the City on or about July 17, 2008.

28. On January 1, 2009, the City reissued RSC's permit, but again without limits for either BOD or TSS.

29. In order to further investigate the City's implementation of its Pretreatment program, EPA issued the City a Request for Information, pursuant to the authority of Section 308 of the Act, 33 U.S.C. 1318. On July 28, 2009, EPA issued the City a second Request for Information.

30. On July 29, 2009, EPA issued an administrative compliance order to RSC that required RSC to take measures to cease discharge of low pH wastewater in violation of 40 C.F.R. 403.5(b) (< 5.0 .S.U.), and to conduct additional monitoring of its discharges to the POTW, and to provide the results of this monitoring and additional information to EPA.

II. Findings of Violations

Violation of Effluent Limits of NPDES permit

31. Part A of the City's 2008 permit sets forth numeric limits for discharges from the POTW (Outfall 001A1), including but not limited to, BOD, TSS, and ammonia (as nitrogen).

32. The City's 2008 NPDES permit imposed effluent limitations on the discharge of ammonia (as nitrogen) from the POTW for the first time.

33. The City's discharges from the POTW violated the effluent limits of the City's 2008 NPDES permit (Part A) as follows:

- a. In July 2008, the effluent violated the permit's limits for monthly average concentrations for ammonia (as nitrogen)(5.38 mg/l vs. a limit of 4.4));
- b. In August 2008, the effluent violated the permit's limits for monthly average concentrations for ammonia (7.73 mg/l vs. a limit of 4.4 mg/l);
- c. In September 2008, the effluent violated the permit's limits for BOD (162 mg/l vs. a limit of 30 mg/l) and TSS (111 mg/l vs. a limit of 80 mg/l); and
- d. In July 2009, the effluent violated the permit's limits for monthly average concentrations for ammonia (4.79 mg/l vs a limit of 4.4 mg/l).

34. The City's violations of the effluent limits described above, are each violations the City's 2008 NPDES permit, and as such, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations of the CWA.

Violations of Requirement to Implement Pretreatment Program

35. The City's violations of the requirement of the City's 2008 NPDES to implement Respondent's approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403 include, but are not limited to, the following:

- a. Prior to January 1, 2007, Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(i), to identify RSC as a SIU despite having knowledge from April 2005 onward of the magnitude of the loadings of BOD and TSS discharged by RSC to the POTW. Per 40 C.F.R. § 403.3(v) an industry is a SIU if it makes up more than 5% of the organic load.

- b. Prior to January 1, 2007, Respondent failed, in violation of 40 C.F.R. § 403.8(f)(1)(iii), to "control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements." Specifically, the City failed to issue a permit to RSC once it had been identified (as early as June 2005), or should have been identified as an SIU.
- c. Despite the fact that the City was required to upgrade its POTW to achieve compliance with its NPDES permit due to loadings from RSC, the City has failed (to date) to ever develop local limits to prevent "interference" and/or "pass through," in violation of 40 C.F.R. § 403.5(c); or alternatively, to demonstrate that local limits are not necessary, per 40 C.F.R. § 403.8(f)(4). Further, the City has failed, to date, to determine whether a "slug" control plan is required for RSC, in violation of 40 C.F.R. § 403.8(f)(2)(vi).
- d. EPA's inspection found the City had failed to have "qualified personnel to carry out the authorities and procedures" of the City's Pretreatment program, in violation of 40 C.F.R. § 403.8(f)(3).

36. The City's violations of the requirements of the 2008 NPDES to implement the City's pretreatment program and 40 C.F.R. Part 403 are each violations of Sections 301(a) and 307 of the CWA, 33 U.S.C. § 1311(a) and § 1317, and the implementing regulations of the CWA.

IV. Order for Compliance

Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

37. Beginning with the first calendar month following the Effective date of this Order, Respondent shall submit to EPA a copy of each SIU's periodic reports on continued compliance, and any enforcement that City has taken addressing any violations in the reports, for the prior month. Each report is due on the 15th day following the calendar month of the reporting period.

38. Immediately upon receipt of this Order, Respondent shall develop local limits as required by 40 C.F.R. 403.5(c), based on a technical evaluation of the discharges of industrial users and based on the Iola POTW's current treatment capacity; or alternatively, Respondent shall conduct a technical evaluation that demonstrates that local limits are not required, pursuant to 40 C.F.R. § 403.8(f)(4). These evaluations shall be conducted in accordance with EPA's "Local Limits Development Guidance," published in July 2004. The City's evaluation of the need for local limits shall present both the Maximum Allowable Headworks Loading ("MAHL") and any proposed Maximum Allowable Industrial Loading ("MAIL") for each pollutant. The evaluation of local limits shall, at a minimum, consider BOD, TSS, and either Ammonia or Total Kjeldahl Nitrogen (TKN). The evaluation shall be based on representative composite samples of

discharges for each industrial discharger.

39. Within 90 days of the Effective date of this Order, the City shall submit the results of the evaluation required by Paragraph 38 to EPA for review and approval. EPA may approve as submitted, request Respondent revise and resubmit, and/or modify and approve the submittal. A copy of the City's evaluation shall also be submitted to KDHE.

40. Within 90 days after EPA's approval of the local limits evaluation, Respondent shall modify all SIU permits affected by the approved local limits if local limits are required.

41. Immediately upon receipt of this Order, Respondent shall conduct an evaluation of whether RSC needs to develop a "slug" control plan, as required by 40 C.F.R. 403.8(f)(2)(vi).

42. Within 90 days of the Effective date of this Order, the City shall submit the results of the City's evaluation of the need for a slug control plan for RSC to EPA for review and approval. EPA may approve as submitted, request Respondent revise and resubmit, and/or modify and approve the submittal. A copy of the City's evaluation shall also be submitted to KDHE.

43. Within 30 days of the Effective date of this Order, and for two years thereafter, Respondent will obtain sufficient training for staff and/or contractors to achieve proper implementation of the City's Pretreatment Program. Within 30 days of completion of any such training Respondent shall report to EPA the source, type of training, and the specific City or contractor personnel that have received this training.

44. All submittals to EPA shall be sent to:

Paul T. Marshall
Pretreatment Coordinator
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

All submittals to KDHE shall be sent to:

Steve Caspers
Pretreatment Unit, Water Bureau
Kansas Department of Health and Environment
1000 SW Jackson Street
Topeka, Kansas 66612 -1367.

V. General Provisions

Effect of Compliance with the terms of this Order for Compliance

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.

46. At EPA's sole discretion, extensions of the compliance deadlines for this may be made by EPA by written notice to Respondent without further formal amendment to the Order.

47. This Order does not constitute a waiver of 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 Section 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1318 and /or any other authority.

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 provisions 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.

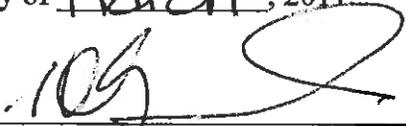
Effective Date

50. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

51. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 10th day of March, 2011



Howard Bunch
Senior Assistant Regional Counsel
Office of Regional Counsel



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division