

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2022-0014
University Park Sewer Benefit District)	
)	FINDINGS OF VIOLATION AND
and)	ORDER FOR COMPLIANCE ON
)	CONSENT
Riley County Public Works Department,)	
)	
Respondents)	
)	
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.

2. Respondent University Park Sewer Benefit District is a utility benefit district that owns a Publicly Owned Treatment Works ("POTW") that treats wastewater from domestic users near Tuttle Creek Lake.

3. Respondent Riley County Public Works Department operates the POTW near Tuttle Creek Lake.

4. EPA and Respondents enter into this Section 309(a)(3) Order 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."

5. It is the Parties' intent through entering into this Order to address Respondents' alleged noncompliance with the CWA and violation of National Pollutant Discharge Elimination System ("NPDES") Permit No. KS0079243. As set forth in this Order on Consent, the Parties have amicably reached an agreement regarding the timeframes for Respondents to attain compliance with the CWA and the NPDES permit.

6. By entering into this Order on Consent, Respondents (1) consent to, and agree not to contest, the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agree to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consent to be bound by the requirements set forth herein. Respondents neither admit nor deny the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondents admit the jurisdictional allegations herein. Respondents also waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that they 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.

Statutory and Regulatory Framework

7. 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 in accordance with the terms of an NPDES permit issued pursuant to that Section.

8. 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.

9. As defined by 40 C.F.R. § 403.3(q), a POTW is a treatment works owned by a State, municipality, or other political subdivision of a State that includes "any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature" as well as "sewers, pipes and other conveyances" that convey wastewater to a POTW.

10. 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, and applicable implementing regulations. EPA retains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA's General Allegations

11. Respondents are political subdivisions of a State, so are persons as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. Respondents are the owner and/or operator of a POTW in Riley County, Kansas, that includes a wastewater treatment facility ("WWTF"), consisting of an activated sludge package treatment plant, disinfection with sodium hypochlorite, and a sludge detector/sludge holding basin, which receives wastewater from a small residential community next to Tuttle Creek Lake.

13. The POTW discharges to Tuttle Creek Reservoir.

14. The POTW is a “point source” that “discharges pollutants” to “navigable waters” of the United States, as these terms are defined by Section 502(14), (12), and (7) of the CWA, 33 U.S.C. § 1362(14), (12), and (7), respectively.

15. On October 14, 2015, the KDHE issued NPDES permit number KS0079243 to Respondents for the POTW pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“2015 NPDES Permit”), which was effective November 1, 2015, through October 31, 2020, and on October 28, 2020, the KDHE reissued the permit (“2020 NPDES Permit”), effective November 1, 2020 through October 31, 2025.

16. Part A of the 2015 NPDES Permit contains limitations for discharges of effluent from the POTW through Outfall 001 to Tuttle Creek Reservoir, as summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	7-Day Average	
Biochemical Oxygen Demand (“BOD”)	mg/L	30.0	45.0	Monthly
Total Suspended Solids (“TSS”)	mg/L	30.0	45.0	Monthly
		Monthly Average	Daily Maximum	
Ammonia (Sept. 1 – March 31)	mg/L	17.3	17.3	Monthly
Ammonia (June)	mg/L	15.1	17.3	Monthly
Ammonia (July and August)	mg/L	12.6	17.3	Monthly
		Daily Minimum	Daily Maximum	
pH	S.U.	6.0	9.0	Monthly
		Monthly Average		
Summer <i>E. coli</i> (April 1 through Oct. 31)	Col. / 100 ml	160		Monthly
Winter <i>E. coli</i> (Nov. 1 through March 31)	Col. / 100 ml	2358		Monthly

17. Part A of the 2020 NPDES Permit contains limitations for discharges of effluent from the POTW through Outfall 001 to Tuttle Creek Reservoir, as summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	7-Day Average	
Biochemical Oxygen Demand ("BOD")	mg/L	30.0	45.0	Monthly
Total Suspended Solids ("TSS")	mg/L	30.0	45.0	Monthly
		Monthly Average	Daily Maximum	
Ammonia (Nov. 1 – March 31)	mg/L	18.1	18.1	Monthly
Ammonia (April)	mg/L	12.1	13.5	Monthly
Ammonia (May)	mg/L	8.8	9.4	Monthly
Ammonia (June)	mg/L	5.9	6.2	Monthly
Ammonia (July and August)	mg/L	4.8	4.9	Monthly
Ammonia (September)	mg/L	7.4	7.8	Monthly
Ammonia (October)	mg/L	14.2	16.3	Monthly
		Daily Minimum	Daily Maximum	
pH	S.U.	6.0	9.0	Monthly
		Monthly Average		
Summer <i>E. coli</i> (April 1 through Oct. 31)	Col. / 100 ml	160		Monthly
Winter <i>E. coli</i> (Nov. 1 through March 31)	Col. / 100 ml	2358		Monthly

18. Part E of the 2020 NPDES Permit contains a schedule of compliance providing that if ongoing operational improvements do not bring the facility into compliance with 2020 NPDES Permit ammonia, TSS, and *E. coli* limits by February 1, 2022, the facility shall complete plant upgrades necessary to meet those limits by October 31, 2025.

19. On May 17 through 19, 2021, EPA performed a Compliance Sampling Inspection of Respondents' WWTF ("Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

20. During the Inspection, the EPA inspector reviewed documents, including facility DMR data, observed the facility, and collected influent and effluent samples.

21. Respondents provided information to the inspector by letter dated July 23, 2021, following the Inspection.

EPA's Findings

Count 1

Failure to Comply with Effluent Limitations

22. The facts stated in Paragraphs 1 through 21 above are re-alleged and incorporated herein by reference.

23. Part A of the 2015 and 2020 NPDES permits establish discharge limits and monitoring requirements, as described in Paragraphs 16 and 17, above.

24. Respondents' POTW effluent exceeded the BOD, TSS, ammonia as nitrogen, and *E. coli* limits, and fell below the minimum pH, of the applicable NPDES permit on multiple occasions from December 2015 to August 2021 as identified in Attachment A.

25. Each failure to comply with effluent limitations is a violation of the limitations and conditions of the applicable NPDES permit and, as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Properly Conduct Analyses

26. The facts stated in Paragraphs 1 through 25 above are re-alleged and incorporated herein by reference.

27. Paragraph 4 of the Standard Conditions for Kansas Water Pollution Control and NPDES Permits, as incorporated into the 2020 NPDES Permit, states that "[a]ll analyses required by this permit shall conform to the requirements of 40 CFR Part 136, unless otherwise specified, and shall be conducted in a laboratory accredited by the Department. For each measurement or sample, the permittee shall record the exact place, date, and time of measuring/sampling; the date and time of the analysis, the analytical techniques or methods used, minimum detection or reportable level, and the individual(s) who performed the measuring/sampling and analysis" as well as the results.

28. During the Inspection, a representative of the EPA found that the pH standards and the chlorine secondary standards in the facility laboratory were out of date, that the facility's analytical equipment was not calibrated according to the manufacturer's instructions, and that facility personnel did not keep records of when the equipment was calibrated.

29. Each failure to comply with Standard Conditions is a violation of the limitations and conditions of the applicable NPDES permit and, as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Reasonable Time to Achieve Compliance

30. 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, the EPA finds that Respondents must immediately comply with all analysis and recordkeeping requirements of the 2020 NPDES Permit, and that forty-three (43) months is a reasonable time for Respondents to repair, replace or construct all wastewater treatment improvements and to achieve compliance with the effluent requirements of that permit.

Order for Compliance on Consent

31. 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 Respondents, and Respondents hereby AGREE, to take the actions described below.

32. In accordance with this Order, Respondents shall immediately comply with all influent and effluent sampling, analysis, reporting and recordkeeping requirements of the 2020 NPDES Permit, and shall take all necessary actions to correct the deficiencies and eliminate and prevent recurrence of Standard Conditions violations.

33. *Compliance Plan.* By no later than August 1, 2022, Respondents shall submit to the EPA, with a copy to the KDHE, a comprehensive written plan (the "Compliance Plan") for achieving compliance with the 2020 NPDES Permit no later than September 1, 2025.

- a. The Compliance Plan must summarize the quarterly reports submitted to KDHE per the compliance schedule identified in the 2020 NPDES Permit.
- b. The Compliance Plan shall describe in detail the actions to be taken or work to be completed, and how such actions or work will enable Respondents to achieve compliance with the effluent limitations prescribed by the 2020 NPDES Permit. The Compliance Plan shall identify the author, licensed engineer, or other consultant who has created the plan to achieve compliance. The Compliance Plan shall identify the commissioners, board, or other party who has approved the plan and will implement the required facility changes.
- c. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than September 1, 2025.
- d. If the EPA notifies Respondents, by mail or email, that further revisions are needed, Respondents shall make such revisions and resubmit the proposed changes to the EPA within thirty (30) calendar days of receipt of the EPA's notice.
- e. If Respondents believe they need additional time to complete, prepare, or revise the

Compliance Plan, they shall submit a request by mail or email to Seth Draper at the address identified in Paragraphs 37 and 39 below, indicating the basis for the request and the period of additional time requested. Any decision by the EPA to grant such request shall be in writing and delivered to Respondents by mail or email.

34. **Compliance Plan Completion.** Within thirty (30) calendar days of completion of the final scheduled corrective action, Respondents shall submit a written certification to the EPA, with a copy to the KDHE, that they have completed all actions required pursuant to this Order on Consent and achieved compliance with the 2020 NPDES Permit.

35. The EPA will promptly review submittals from Respondents. If, after review of Respondents' submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 46 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Semiannual Reporting

36. Beginning no later than August 1, 2022, and on each successive February 1 and August 1 until this Order is terminated pursuant to Paragraph 47, Respondents shall provide to the EPA, with a copy to the KDHE, a report containing, at a minimum, the following information for the previous six (6) months:

- a) A copy of all monthly monitoring reports regarding compliance with effluent limitations and conditions and supporting documentation;
- b) A detailed description of all actions taken to inspect, repair, clean, maintain and/or improve the collection system and treatment plant pursuant to the Compliance Plan; and
- c) A description of all work planned for the next 6-month reporting period pursuant to the Compliance Plan.

Reports/Submissions

37. **Submittals.** All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 40 below, shall be submitted by electronic mail to *draper.seth@epa.gov*.

38. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically.

39. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard copy to:

Seth Draper, or his successor

U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

Certification

40. 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

41. Compliance with the terms of this Order shall not relieve Respondents 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.

42. 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

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

Severability

44. If any provision or authority of this Order, or the application of this Order to Respondents, is held by federal judiciary authority to be invalid, the remainder of this Order shall not be affected by such a holding and shall apply with full force and effect to Respondents.

Effective Date

45. The terms of this Order shall be effective and enforceable against Respondents on the Effective Date, which is the date this Order is signed by the EPA.

Consistency with State Permit

46. EPA shall make reasonable efforts to implement this order consistent with the timelines of NPDES Permit No. KS0079243.

Modification

47. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondents, without further formal amendment to the Order. The EPA's consent for a requested extension will 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.

Termination

48. 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 _____, 2021.

**Wendy Lubbe
Acting Director
Enforcement and Compliance Assurance Division**

**Natasha Goss
Office of Regional Counsel**

For Respondent University Park Sewer Benefit District:

Greg McKisley 4-18-22
Signature Date

Greg McKisley
Name

Commission Chair
Title

For Respondent Riley County Public Works Department:

Signature Greg McKinley Date 4-18-22

Name Greg McKinley

Title Commission Chair

Certificate of Service

I certify that on the date noted below I hand 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
R7_Hearing_Clerk_Filings@epa.gov

Representative(s) for Respondents:

John Ellermann
Director, Riley County Public Works
jellermann@rileycountyks.gov

Robert Blume
Lead Operator, University Park Sewer Benefit District
bob.blume47@gmail.com

Clancy Holeman
Riley County Counselor
choleman@rileycountyks.gov

Representatives for Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Seth Draper
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
draper.seth@epa.gov

Date

Signature