

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2022-0069
)	
Spring Hill, Kansas)	FINDINGS OF VIOLATION AND
)	ORDER FOR COMPLIANCE ON
)	CONSENT
)	
Respondent)	
)	
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 the city of Spring Hill, Kansas, the owner and operator of Spring Hill Treatment Plant No. 2 is a Publicly Owned Treatment Works (“POTW”). .

3. EPA and Respondent 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.”

4. It is the Parties’ intent through entering into this Order to address Respondent’s alleged noncompliance with the CWA and violation of National Pollutant Discharge Elimination System (“NPDES”) Permit No. KS0095516. As set forth in this Order on Consent, the Parties have amicably reached an agreement regarding the timeframes for Respondent to attain compliance with the CWA and the 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, and (3) 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 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

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

7. To implement Section 402 of the CWA, 33 U.S.C. § 1342, 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.

8. 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.

9. 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

10. Respondent is a political subdivision of a State, so is a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Respondent is the owner and/or operator of a POTW in Spring Hill, Kansas, that includes a wastewater treatment facility (“WWTF”) that treats domestic and industrial wastewater from the city of Spring Hill. The WWTF has a design average daily flow of 1.25 million gallons per day and consists of an influent pump station, a mechanical bar screen, two aeration basins, clarifiers, and ultraviolet disinfection. Effluent from the WWTF discharges through Outfall 001.

12. The POTW discharges to Sweet Water Creek, a “navigable water” as defined by CWA § 502(7), 33 U.S.C. § 1362(7).

13. 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.

14. On August 1, 2014, the KDHE issued NPDES permit number KS0095516 to Respondent for the POTW pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“2021 NPDES Permit”), which was effective through July 31, 2019. On August 1, 2019, the KDHE issued NPDES permit number KS0095516 to Respondent for the POTW pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (“2021 NPDES Permit”), which is effective through July 31, 2024. Respondent’s permit authorizes Respondent to discharge from Outfall 001 in accordance with the permit’s effluent limits and to comply with the permit’s Standard Conditions.

15. Between January 24 and 27, 2022, EPA performed a Compliance Sampling Inspection of Respondent’s WWTF (“Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

16. During the Inspection, the EPA inspector reviewed documents, including facility discharge monitoring report (DMR) data, observed the facility, and collected influent and effluent samples.

17. Respondent provided information to the inspector by letter dated March 11, 2022, following the Inspection.

EPA’s Findings

Count 1

Failure to Comply with Effluent Limitations

18. Part I of Respondent’s NPDES permit sets effluent limits for Outfall 001, including but not limited to, Ammonia, E. coli, total nitrogen, and total phosphorous.

19. Based on a review of Respondent’s DMR data, between January 2018 and November 2021, Respondent exceeded its NPDES permit effluent limits for Ammonia 12 times and E. coli four times.

20. Samples collected during EPA’s inspection showed exceedances for total nitrogen and total phosphorous each day of the inspection between January 25 and 27, 2022.

21. Each failure to comply with NPDES permit 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 Apply for an Industrial Stormwater Permit

22. 40 C.F.R. § 122.26(b)(14)(ix) designates wastewater treatment facilities “used in the storage treatment ... of municipal or domestic sewage ... with a design flow of 1.0 [million gallons per day] or more” as an “industrial activity” requiring an NPDES stormwater permit.

23. During the January 2022 EPA inspection, the inspector observed that the POTW did not have an NPDES stormwater permit despite having a design flow of over 1 million gallons per day. During the inspection, the operator confirmed that the POTW had not applied for an NPDES stormwater permit.

24. The POTW’s failure to apply for an NPDES stormwater permit is a violation of 40 C.F.R. § 122.26(b)(14)(ix) and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3
Failure to Operate and Maintain

25. Part 6 of Respondent’s NPDES permit requires Respondent to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this permit and Kansas and Federal law.

26. During the EPA inspection, the inspector observed the following failures to properly operate and/or maintain the WWTF:

- a. the mechanical bar screen was broken and not operating;
- b. excess grease buildup in the form of excessive foam and floating solids;
- c. unlocked wet well lid at the WWTF’s northeast lift station, and;
- d. sludge buildup due to a broken sludge sweep.

27. Each failure to properly operate and maintain the WWTF 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

28. 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 Respondent must immediately comply with all monitoring and recordkeeping requirements of the 2021 NPDES Permit, and that twelve (12) months is a reasonable time for Respondent 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

29. 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 Respondent, and Respondent hereby AGREES, to take the actions described below.

30. In accordance with this Order, Respondent shall immediately comply with all influent and effluent sampling, analysis, monitoring and reporting, testing, recordkeeping, and operation and maintenance requirements of its NPDES Permit, and shall take all necessary actions to correct the deficiencies and eliminate and prevent recurrence of violations.

31. *Compliance Plan.* By no later than sixty (60) days after the effective date of this Order, Respondent shall submit to the EPA, with a copy to the KDHE, a comprehensive written plan (the “Compliance Plan”) for achieving compliance with the 2021 NPDES Permit.

- a. 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 Respondent to achieve compliance with its NPDES Permit. The Compliance Plan shall identify the author, licensed engineer, or other consultant who has created the Compliance Plan to achieve compliance.
- b. 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 six (6) months from the effective date of the order.
- c. If the EPA notifies Respondent, by mail or email, that further revisions are needed, Respondent shall make such revisions and resubmit the proposed changes to the EPA within thirty (30) calendar days of receipt of the EPA’s notice.
- d. If Respondent believes they need additional time to complete, prepare, or revise the Compliance Plan, they shall submit a request by email to Bryant Harris at the address identified in Paragraph 34 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 Respondent by mail or email.

32. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective measures, Respondent 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 2021 NPDES Permit.

33. The EPA will promptly review submittals from Respondent. If, after review of Respondent’s 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 43 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

34. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement, shall be submitted by electronic mail to *harris.bryant@epa.gov*.

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

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

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

Certification

37. 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

38. 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.

39. 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

40. 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

41. 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 remainder of this Order shall not be affected by such a holding and shall apply with full force and effect to Respondent.

Effective Date

42. 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

43. 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 Respondent, 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

44. 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 _____, 2022.

Wendy Lubbe
Acting Director
Enforcement and Compliance Assurance Division

Chris Muehlberger
Office of Regional Counsel

For Respondent Spring Hill Treatment Plant No. 2:



Signature

6/2/2022

Date

David Carr

Name

Utilities Supervisor

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
R7_Hearing_Clerk_Filings@epa.gov

Representative(s) for Respondent:

David Carr
Utilities Superintendent, Spring Hill, Kansas
david.carr@springhillks.gov

Joe Berkley
Mayor of Spring Hill, Kansas
joe.berkley@springhillks.gov

Representatives for Complainant:

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
muehlberger.christopher@epa.gov

Bryant Harris
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
harris.bryant@epa.gov

Date

Signature