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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2018-0264
The City of Coffeyville, Kansas)	
)	FINDINGS OF VIOLATION AND
Respondent)	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 Order for Compliance on Consent (“Order”) 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 Water, Wetlands and Pesticides Division.

2. Respondent is the city of Coffeyville, Kansas (“Respondent” or “the City”), a municipality chartered under the laws of the state of Kansas. Respondent is the owner and/or operator of the Municipal Separate Storm Sewer System (“MS4”), located within the corporate boundary of the city of Coffeyville, Montgomery County, Kansas.

3. The EPA, together with the City 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 noncompliance by the City in violation of its MS4 National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order, the Parties have amicably reached agreement regarding the timeframes for the City to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, 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 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.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for various categories of stormwater discharges. Section 402(p)(2) requires permits for five categories of stormwater discharges. Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), requires permitting for additional categories of stormwater discharges based on the results of studies conducted pursuant to Section 402(p)(5) of the CWA, 33 U.S.C. § 1342(p)(5).

9. Pursuant to Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), EPA promulgated regulations (“Phase II stormwater regulations”) at 40 C.F.R. Part 122 setting forth the additional categories of stormwater discharges to be permitted and the requirements of the Phase II program.

10. 40 C.F.R. § 122.26(a)(9)(i)(A) states that on or after October 1, 1994, for discharges composed entirely of stormwater . . . operators shall be required to obtain a NPDES permit . . . if the discharge is from a small municipal separate storm sewer system (“MS4”) required to be regulated pursuant to 40 C.F.R. § 122.32.

11. 40 C.F.R. § 122.26(b)(8) defines “municipal separate storm sewer” as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the

CWA that discharges to waters of the United States; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.

12. 40 C.F.R. § 122.26(b)(16) defines “small municipal separate storm sewer system,” in part, as all separate storm sewers that are:

- a. owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body . . . having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes [. . .];
- b. not defined as “large” or “medium” municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7), or designated under paragraph (a)(1)(v) of this section.

13. 40 C.F.R. § 122.32(a) provides that a small MS4 is regulated if:

- a. the small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census; or
- b. the MS4 is designated by the NPDES permitting authority, including where the designation is pursuant to §§123.35(b)(3) and (b)(4), or is based upon a petition under §122.26(f).

14. The Kansas Department of Health and Environment (“KDHE”) is the agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Factual Background

15. Respondent is a municipality chartered under the laws of the state of Kansas, and as such, is a “person,” as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

16. Respondent operates a stormwater drainage system consisting of, among other things, drain inlets, storm sewers, and outfalls, and as such is a “municipal separate storm sewer” as that term is defined in 40 C.F.R. § 122.26(b)(8).

17. At all times relevant to this Order, Respondent owned and/or operated an MS4, which does not meet the criteria to be a large or medium MS4, and thus is the owner and/or operator of a “small municipal separate storm sewer system,” as defined by 40 C.F.R. § 122.26(b)(4)(i).

18. Respondent's small MS4 is located in the Coffeyville, Kansas "urbanized area" as defined by the 2000 and 2010 Census, and therefore, at all times relevant to this Order, Respondent's small MS4 is subject to regulation.

19. Respondent's small MS4 is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. Respondent discharges pollutants into "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

21. Discharges from Respondent's small MS4 result in the addition of pollutants from a point source to navigable waters, and thus are the "discharges of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. Respondent's discharges from a small MS4 require a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. § 122.32.

23. KDHE issued a permit on February 1, 2014, for discharges from Coffeyville's small municipal separate storm sewer system which will expire January 31, 2019 ("Current Permit").

24. On or about August 28-31, 2017, EPA performed an inspection of the City's MS4 under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the adequacy of the City's MS4 in accordance with the CWA.

Findings of Violation

25. The facts stated in Paragraphs 15 through 24 above are herein incorporated.

Count 1 – Six Minimum Control Measures

26. Part I.C., Six Minimum Control Measures, of the 2014 permit requires the permittee to continue to review, update and implement best management practices ("BMPs") with measurable goals for Public Education and Outreach, Public Involvement and Participation, Illicit Discharge Detection and Elimination, Post-Construction Stormwater Management in New Development and Redevelopment Projects, and Pollution Prevention/Good Housekeeping for Municipal Operations. The same section of the permit states, "The detailed requirements for the Six Minimum Control Measures are explained at www.kdheks.gov/muni/download. The document referred to is entitled, "Fact Sheet: Six Minimum Control Measures for Municipal Separate Storm Sewer Systems ("MS4s") with NPDES Permits."

27. Standard Condition 11 of the permit, Records Retention, states, "Unless otherwise specified, all records and information resulting from the monitoring activities required by this permit, including all records of analyses and calibration and maintenance of instruments and

recordings from continuous monitoring instruments, shall be retained for a minimum of three years, or longer if requested by the Division.”

28. Part I.C.3. of the permit requires the City to review, update, and implement BMPs with measurable goals to reduce pollutants from illicit discharges. The Fact Sheet states the City must develop, implement, and enforce a program to detect and eliminate illicit discharges to the MS4. During the EPA inspection, the City stated it achieved this requirement by performing dry weather inspections of stormwater outfalls. The City claimed to inspect ninety percent of outfalls each year. However, the City did not document the inspections. Furthermore, the inspection revealed no other records, procedures, nor documentation demonstrating that the City enforces its illicit discharge ordinance.

29. Part I.C.4. of the permit requires the City to review, update, and implement BMPs with measurable goals to pollutants from construction sites. The Fact Sheet states the program, at a minimum, must include, ordinances in cities that have authority to enact them, requirements for construction site owner or operators to implement appropriate erosion and sediment control best management practices; requirements for construction site owners or operators to control waste, etc. that is likely to cause adverse impacts to water quality; procedures for site plan review which incorporate consideration of potential water quality impacts; procedures for receipt and consideration of information submitted by the public; and procedures for site inspection and enforcement of control measures. The EPA inspection revealed that the City had no procedures in place to review site plans for the purpose of reducing impacts to water quality.

30. Part I.C.5. of the permit requires the City to review, update, and implement BMPs with measurable goals to reduce pollutants in post-construction runoff. The Fact Sheet states, “The permittee shall develop, implement, and enforce a program to address post-construction stormwater runoff ... The program must include, at a minimum, the development and implementation of BMPs to prevent or minimize adverse water quality impacts; strategies which include a combination of structural and/or non-structural BMPs appropriate for the municipality; ordinances for resolutions to address post-construction runoff from new development and redevelopment projects to the extent allowable under State and local law; and ensure adequate long-term operation and maintenance of BMPs.” The EPA inspection referenced in Paragraph 24 above found that the City does not review or perform post construction water quality calculations and does not verify the impact of new development or redevelopment on water quality. In addition, there were no written or practiced procedures to inform developers of any regulations regarding the maintenance of post-construction controls. Furthermore, the City does not ensure adequate long-term operation and maintenance of post-construction BMPs.

31. Part I.C.6. of the permit requires the City to review, update, and implement BMPs with measurable goals to reduce pollutants from municipal operations. The Fact Sheet states, “the permittee shall develop and implement an operation and maintenance program that includes employee training to prevent and reduce stormwater pollution from municipal activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.” The EPA inspection revealed that the City conducted employee training, performs street sweeping and storm sewer maintenance activities.

The City’s activities, as presented during the inspection did not address park and open space maintenance, fleet and building maintenance, and public construction projects.

32. The City’s failures described above are violations of the conditions or limitations found in the City’s Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, are violations of the CWA.

Count 2 - Failure to Implement an Adequate Monitoring Program

33. Part II, Total Maximum Daily Load (“TMDL”) Table, of the permit lists the TMDL regulated pollutants applicable to the permittee. Coffeyville is subject to the following:

TMDL Regulated Pollutant	Specific Impaired Stream or Lake to Target
Bacteria	Sycamore Creek
Nutrients	Sycamore Creek
Sediment	Sycamore Creek

34. Part III, Monitoring Requirements of the permit requires the permittee to “implement a wet weather monitoring program designed to assess the improvements in the water body due to the BMP control measures implemented under the Stormwater Management Plan (“SMP”). Sampling and analysis is to include, at a minimum, instream monitoring of the main stream(s) entering and leaving the jurisdictional Permit Area for the pollutants identified by the governing TMDLs during or immediately after a specified storm event....”

35. Part III, Monitoring Frequency and Periods, Section A. of the permit requires the permittee to monitor four storm events per year per site.

36. Part III, Monitoring Frequency and Periods, Section B of the permit requires, “at a minimum, monitoring shall be conducted in the spring (between March 1 and June 30) and summer (between July 1 and October 31) for the parameters as appropriate based on the impairment.”

37. Part III., Parameters, lists the impairment, parameter, and sample type the permittee must collect and analyze as detailed in the table below.

TMDL Impairment	Parameter to be Monitored	MRL	Sample Type
Nutrients	Total Phosphorus as P (mg/L)	0.05	Grab or Composite
Nutrients	Ortho-Phosphorus as P (mg/L)	0.05	Grab or Composite
Nutrients	Nitrate + Nitrite as N (mg/L)	0.10	Grab or Composite
Nutrients	Total Kjeldahl Nitrogen (mg/L)	0.10	Grab or Composite
Nutrients	Total Nitrogen (mg/L)		Calculate
Nutrients	Dissolved Oxygen (mg/L)	0.10	Grab
Sediment	Total Suspended Solids (mg/L)	10	Grab or Composite
Sediment	Turbidity (NTU)		Grab or Composite
Bacteria	E. coli (Col/100 ml or MPN)	10	Grab

38. Part III of the permit also lists additional information to be documented when samples are collected. The permittee must record a gauge reading of rainfall in the last 24 hours, stream flow (CFS and depth from a standard -feet), stream level as rising, falling, and steady, and stream velocity (rapid, normal, still). The permit further requires that grab samples for instream monitoring are to be obtained within four hours of rising stages on streams entering and leaving the permit area.

39. Standard Conditions 4 of the permit requires that all analyses required by the permit shall conform to the requirements of 40 C.F.R. Part 136, unless otherwise specified.

40. The holding times were regularly exceeded for some of the parameters in violations of 40 C.F.R. Part 136.

41. The permittee only collected and analyzed one set of samples in 2017.

42. In 2015 no samples were collected and analyzed between July 1 and October 31.

43. The City's failures described above are violations of the conditions and limitations of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, are violations of the CWA.

Count 3 - Failure to Implement Adequate BMPs to Address TMDL Pollutants

44. Part I.D of the permit addresses TMDL regulated pollutants and requires the permittee to continue to review, update, implement and develop, when necessary, structural and non-structural BMPs which will reduce to the maximum extent practicable the discharge of the TMDL regulated pollutants from the MS4. Part I.D.1.h. requires that the permittee have a plan and schedule to monitor the effectiveness of the BMPs.

45. Part I.D. 2.a. of the permit states that, "overall TMDL measurable goals shall be based upon instream sampling of the main stream(s) existing in, or entering and leaving the Permit Area during or immediately following storm events."

46. Part I.D.2.c. of the permit states that measurable goals for reducing pollutants contributed by MS4s shall be expressed in quantifiable values to: 1) reduce the concentration of pollutants, 2) reduce the total mass of pollutants, 3) a combination of the above methods, and 4) expressed as average and median values (percent reduction of inflow volume, reduction in pollutant concentration or mass loading) or for bacteria as a geometric mean.

47. Part IV, Permit Compliance Activities and Schedules, of the permit provides a schedule for certain activities required in the permit. Part IV. C, Year 2016, sets the requirements for 2016. The permittee was to, "Continue source control programs and monitoring of storm events at selected sites. By July 1, 2016, select, design, and initiate installation of appropriate

Part. IV. D, Year 2017 sets the requirements for 2017. The permittee was to, “continue BMP installation and/or source control programs and stream/lake/BMP outfall monitoring as appropriate. Complete BMP installations by the end of the year.”

48. Monitoring since 2014 reveals several parameters consistently at higher concentrations in the downstream samples indicating that additional and/or different BMPs need to be implemented to address the TMDLs in Sycamore Creek.

49. The BMPs implemented by the Respondent have not been modified to address the TMDLs in violation of the permit.

50. The City’s failures described above are violations of the conditions or limitations found in the City’s Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, are violations of the CWA.

Reasonable Time to Achieve Compliance

51. 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 ninety (90) days is a reasonable time for Respondent to achieve compliance with the terms and conditions of its Permit.

Order for Compliance

52. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to take the actions described below.

53. Within ninety (90) days of the effective date of this Order, the City shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all applicable requirements of its MS4 permit, including, as necessary, revisions to the SMP.

54. Within one hundred twenty (120) days of the effective date of this Order, the City shall provide EPA and KDHE a written description of the actions the City has taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

Reports/Submissions

55. *Semi-Annual Reporting.* In addition to the report required above, Respondent shall submit semi-annual reports describing the actions it has taken to ensure continued compliance

with the terms of its Permit and this Order. These reports are due beginning six (6) months from the effective date of the order and every six (6) months thereafter until the Order is terminated. Each report shall include, at a minimum:

- a. a description of implementation and/or revision of the SMP during the previous six (6) month period;
- b. a description of work and other actions taken to construct the structural controls and/or implement other controls described above, in the previous six (6) month period; and
- c. copies of all relevant documentation regarding the activities described pursuant to subparagraphs (a) and (b), including, but not limited to, inspection reports and monitoring records, formal and informal enforcement actions, etc.

56. *Submittals.* All documents required to be submitted to EPA by this Order shall be submitted by electronic mail to:

sans.cynthia@epa.gov

Cynthia Sans, or her successor
U.S. Environmental Protection Agency Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

57. 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.

58. All documents required to be submitted pursuant to this Order shall also be submitted by mail to KDHE to the address provided below:

Ms. Jaime Gaggero, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

59. 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.

60. 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

61. 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 309 of the CWA, 33 U.S.C. § 1319 and/or any other authority.

Severability

62. 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.

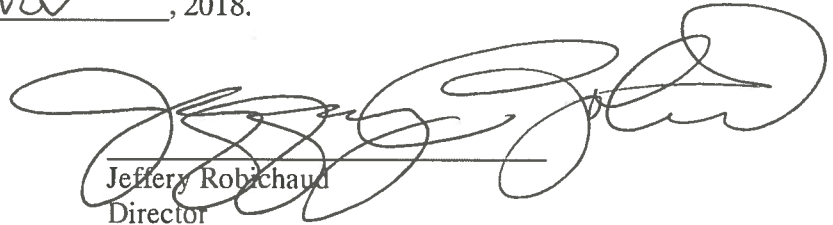
Effective Date

63. 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 EPA.

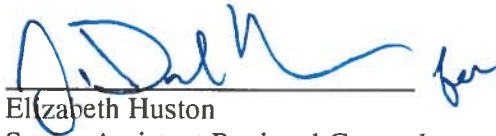
Termination

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

Issued this 28TH day of Nov, 2018.




Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division



Elizabeth Huston
Senior Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, City of Coffeyville, Kansas:

Signature  _____ Date 11/27/18
Name Paul Bauer
Title Mayor

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 Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 661219.


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 Paul Bauer
Mayor of Coffeyville
102 W. 7th Street
P. O. Box 1629
Coffeyville, Kansas 67337

and via first class mail to:

Ms. Jaime Gaggero, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

Nov 29, 2018
Date



Signature