

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
PITTSBURG, KANSAS )

) FINDINGS OF VIOLATION AND  
) ORDER FOR COMPLIANCE

) Respondent )

) Docket No. CWA-07-2011-0108

) Proceeding under Sections 308(a) )  
) and 309(a)(3) )  
) of the Clean Water Act, )  
) 33 U.S.C. §§1318(a) and 1319(a) )  
)

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and ORDER (Order) 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), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent, the city of Pittsburg, Kansas, owns and operates a publicly owned treatment works (POTW) in the state of Kansas that treats domestic and industrial waste. The POTW includes a wastewater treatment facility and the system of sewers, pipes, and other conveyances that collect and convey sanitary sewage and industrial wastewater to the treatment facility serving the city of Pittsburg, Kansas.

**II. Statutory and Regulatory Framework**

3. 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 only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. 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.

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

6. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, device and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

7. The Kansas Department of Health and Environment (KDHE) is the agency within the state of Kansas that has been authorized to administer the federal NPDES program pursuant to Section 402 of the CWA and its implementing regulations. EPA maintains concurrent enforcement authority with approved state NPDES programs for violations of NPDES permits.

### **III. Findings of Fact**

8. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. Respondent owns and operates a POTW that treats domestic and industrial wastewater.

10. Respondent’s POTW discharges into Cow Creek, which is a navigable water of the United States, as defined by Section 502 of the CWA, 33 U.S.C. § 1362.

11. Respondent’s POTW is a “point source” that “discharges pollutants” into “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

13. On May 1, 2008, KDHE issued to the Respondent NPDES Permit No. KS0038954 (hereafter “NPDES permit”) for discharges from its POTW to Cow Creek, a tributary to the Spring River in the Neosho River basin. The NPDES permit expires April 30, 2013.

14. Respondent’s NPDES permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the Permit as one or more “outfalls,” to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES Permit.

15. Between October 26-28, 2009, an EPA representative performed an inspection of Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspector's observations included, but were not limited to the following:

- a) numerous instances of releases of untreated sewage from manholes within the City's sanitary sewer system, referred to as Sanitary Sewer Overflows (SSOs), and discharges of partially treated wastewater from the POTW (bypasses) between January 2007 and the date of inspection; and
- b) significant infiltration and inflow (I&I) in the City's collection system.

16. From January 2007 through June 2011, the City submitted numerous reports to KDHE identifying 72 instances of discharges of partially treated wastewater and 138 releases of sanitary sewage from the City's POTW.

#### **IV. Findings of Violation**

17. The facts stated in paragraphs 8- 16 are herein incorporated.

#### **Proper Operation and Maintenance**

18. Standard Condition, Paragraph 11 of Respondent's NPDES permit requires Respondent to provide an alternative power source sufficient to operate the wastewater control facilities or otherwise control pollution and all discharges upon the loss of the primary source of power to the wastewater control facilities.

19. Standard Condition, Paragraph 8 of Respondent's NPDES permit, entitled "Facilities Operation" requires Respondent to at all times maintain in good working order and efficiently and effectively operate all treatment, collection, control systems or facilities, to achieve compliance with the terms of the permit.

20. The proper operations and maintenance requirements are set forth at 40 C.F.R. § 122.41(e).

21. Based on the results of the EPA inspection and records maintained by KDHE, Respondent failed to properly operate and maintain the POTW by:

- a. failing to install alternative sources of power at the Southeast, Centennial Mall, and Sugar Creek pump stations, and the Martinous, North Michigan, and West 10<sup>th</sup> Street grinder pumps; and
- b. failing to adequately address excessive I&I in the collection system that has contributed to the following releases of untreated waste water containing sewage

from manholes within the City's sanitary sewer system, referred to as Sanitary Sewer Overflows (SSOs), and discharges of partially treated wastewater from the POTW (bypasses) between January 2007 and June 2011:

Calendar Quarter	Number of Bypasses	Number of SSOs
January-March 2007	4	17
April-June 2007	13	27
July-September 2007	3	3
October-December 2007	4	0
January-March 2008	3	3
April-June 2008	16	36
July-September 2008	3	2
October-December 2008	1	0
January-March 2009	1	4
April-June 2009	2	12
July-September 2009	0	20
October-December 2009	3	5
January-March 2010	1	1
April-June 2010	6	7
July-September 2010	3	0
October-December 2010	0	0
January-March 2011	6	1
April-June 2011	3	0
Total:	72	138

22. Respondent's failure to provide alternative power sources for parts of the wastewater control facilities and address the significant I&I in its collections system is a violation of the terms and conditions of Respondent's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **V. Order for Compliance**

23. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below in Paragraphs 24 through 35 of this Order.

#### **Alternative Power**

24. Within 30 days of the Effective Date, the City shall take any actions necessary to eliminate the violation described in Paragraph 21(a), and the City shall submit to the EPA and KDHE a report verifying that this violation has been corrected. Verification of alternative power

at lift stations shall consist of dates, photographs, and signed work order close-out forms if the work was completed by City personnel or signed certification forms if completed by a private contractor.

25. If the violation described in Paragraphs 21(a) cannot be corrected within 30 days of the Effective Date, the City shall submit a detailed plan to the EPA and KDHE with a timeline and specific steps for correction of this violation within the shortest possible time.

### **Capacity, Management, Operation, and Maintenance**

26. By March 31, 2012, Respondent shall submit to EPA a documented Capacity, Management, Operation, and Maintenance (CMOM) program to achieve the following measurable objectives:

- a. Establish a routine schedule for inspection and proactive maintenance of all components in the wastewater collection and transmission system, including sewer lines, manholes, and mechanical pumps;
- b. Implement Respondent's Sewer Overflow Response Plan (SORP). The SORP component of the CMOM program shall consist of an updated plan, signed by an authorized representative of Respondent, that reflects current practices and that reflects the revisions requested by KDHE via letter dated June 14, 2010. The SORP shall also include a process for determining the source of excessive I&I that causes each SSO, if applicable, and, to the extent feasible, eliminating the source;
- c. Identify and quantify (frequency, volume, water quality) bypass events at the WWTP and the cause(s) of such bypass events (e.g., I&I, capacity issues other than I&I); and
- d. Establish a schedule for implementation of the CMOM program.

### **Sanitary Sewer System Evaluation and Manhole 4A-17**

27. Within 30 days of the Effective Date, Respondent shall submit to EPA and KDHE the following items:

- a. A summary of all sewer evaluations, capacity assessments, I&I analyses, and/or other studies of Respondent's sanitary sewer system that characterize unrepaired sewer defects and sources of I&I. The summary shall also include any studies or evaluations of mine shafts, storm sewers, and/or other types of chambers or conduits of water and their observed or potential communication with Respondent's sanitary sewer system. This summary shall include all such surveys

and studies conducted since 2005 by Respondent, on behalf of Respondent, or for Respondent's review.

- b. Copies of all reports generated as a product of the evaluations and studies described in Paragraph 27(a).

28. Within 90 days of the Effective date, Respondent shall submit to EPA and KDHE a work plan, certified by a Professional Engineer, that details the approach Respondent will take to comprehensively study the deficiencies in its sanitary sewer collection system, prioritize projects for rehabilitation and restoration to eliminate sources of excessive I&I, and implement appropriate projects for rehabilitation and restoration. Specifically, the work plan shall contain the following items:

- a. A plan for how Respondent proposes to conduct a Sanitary Sewer Evaluation Survey (SSES) to comprehensively identify and evaluate the following characteristics of Respondent's sanitary sewer system that were not thoroughly evaluated by any studies or evaluations identified in Paragraph 27(a) above: sewersheds with significant I&I; sources and quantity of excessive I&I, accounting for cross connections between the sanitary sewer system and mine shafts, tunnels, the storm sewer system, or any other subterranean conveyances; sources and quantity of SSOs; and areas subject to building backups from the sanitary sewer system.
- b. An update and plan for any necessary future action regarding implementation of the project to eliminate SSOs from Manhole 4A-17.

29. The SSES described in Paragraph 28(a) shall be conducted in accordance with the guidance provided in the appropriate sections of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2008; and *A Guide to Short Term Flow Surveys of Sewer Systems*, WRC Engineering (Undated); and sound engineering practices.

30. By December 1, 2013, Respondent shall submit to EPA and KDHE an SSES report that contains the following items: a cost effective analysis of potential I&I reductions and/or modifications to treatment capacity; and a recommendation of rehabilitation activities to eliminate significant I&I.

31. By June 30, 2014, Respondent shall submit to EPA and KDHE a Master Plan that is certified by a Professional Engineer and meets the requirements of the City's NPDES permit and the CWA. The Master Plan shall include, but not be limited to, the following components:

- a. A sewer rehabilitation program that specifies projects to eliminate significant I&I.

- b. A treatment capacity improvement program, if necessary to complement the sewer rehabilitation program.
  - c. A timeline for completion of the programs in Paragraphs 31(a) and 31(b).
32. The Respondent shall implement the Master Plan as expeditiously as possible.

### **Tracking and Reporting**

33. Beginning on the Effective Date of the Order, and continuing until termination of the Order, Respondent shall track the following information and submit in writing to EPA and KDHE an annual report by October 1 that contains the following information:

- a. The status of implementation of all plans and programs required by this Order;
- b. A table summarizing any and all SSOs, bypasses, and private property back-ups that occurred during the year, with the following information for each occurrence:
  - i. The date that the SSO including building back-up, and bypass, began and ended;
  - ii. The source of information for the SSO including building back-up, and bypass, e.g., employee observation, electronic reporting or warning system, citizen complaint;
  - iii. The specific (and general) location of the SSO including building back-up, and bypass (i.e., street address, manhole identification, sewershed);
  - iv. The monitored or best estimate of the volume discharged;
  - v. Sampling results from any sampling performed;
  - vi. If applicable, the waterbody into which the wastewater was released;
  - vii. A measure of the rainfall received in the City of Pittsburg during the 24-hour period preceding the onset of the discharge;
  - viii. The specific cause(s) of the event, if known, including for backups, whether it was caused by the City's collection system or private service connections;
  - ix. Measures taken to respond to the discharge event and minimize the duration and/or impacts of the discharge;

### **Submissions**

34. All documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Mr. Michael Boeglin  
Water Enforcement Branch  
U.S. Environmental Protection Agency-Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

35. All documents required to be submitted to KDHE by this Order shall be submitted by mail to:

Mr. Mike Tate, Chief  
Technical Services Section  
Bureau of Water  
Kansas Department of Health and Environment  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367

and

Mr. Greg Taylor  
Bureau of Environmental Field Services  
Kansas Department of Health and Environment  
Southeast District Office  
1500 West Seventh  
Chanute, Kansas 66720-2570.

### **Certification**

36. All submissions made by Respondent to EPA and KDHE pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

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 submissions of false information.

## **VI. General Provisions**

### **Effect of Compliance with the terms of this Order**

37. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

38. 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 Section 309 of the CWA, 33 U.S.C. § 1319, 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**

39. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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**

40. If any provision 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.

### **Parties Bound**

41. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

**Effective Date**

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

**Termination**

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

*In the matter of:*  
*Pittsburg, Kansas*  
*Findings of Violation and*  
*Order for Compliance*  
*Docket No.: CWA-07-2011-0108*  
*Page 11 of 12*

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Issued this 16th day of September, 2011.



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



Elizabeth Huston  
Assistant Regional Counsel  
Office of Regional Counsel

*In the matter of:  
Pittsburg, Kansas  
Findings of Violation and  
Order for Compliance  
Docket No.: CWA-07-2011-0108  
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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/Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Findings of Violation/Order for Compliance by first class certified mail, return receipt requested, to:

Honorable Marty Beezly  
Mayor  
City Hall  
201 West 4<sup>th</sup> Street  
Pittsburg, Kansas 66762

Mr. John H. Bailey, Director  
Department of Utilities  
City of Pittsburg, Kansas  
201 West 4<sup>th</sup> Street  
Pittsburg, Kansas 66762-0688

Mr. Karl Mueldener, Director  
Bureau of Water  
Kansas Department of Health and Environment  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367.

9/27/11  
Date

Kimberly [Signature]