

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	Docket No. CWA-07-2016-0024
)	
CITY OF RUSSELL, KANSAS,)	
)	
Respondent)	COMPLAINT AND
)	CONSENT AGREEMENT/
)	FINAL ORDER
)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the U.S. Environmental Protection Agency's (EPA) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondent is the City of Russell, Kansas (hereafter "Respondent" or "the City"), a political subdivision of the State of Kansas and a "municipality" within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works (POTW) that treats domestic, commercial, and industrial wastewater.

Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. 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.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial and municipal waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the "waters of the United States," which are defined at 40 C.F.R. § 122.2, and which include tributaries to waters of the United States.

11. Section 402 of the CWA, 33 U.S.C. § 1342, 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.

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

13. The Kansas Department of Health and Environment (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, implementing regulations, and a Memorandum of Understanding between EPA and KDHE dated May 23, 1973, as amended. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

15. The City of Russell is a “person” within for the purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

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

17. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial, and industrial processes. The POTW includes the following treatment systems in order of hydraulic flow: 2 mechanical bar screens, 2 grit removal units, a Parshal flume, and influent lift station, 4-cell lagoon system with 4 solar-powered aerators on cell 1 with 1 aerator and a 3 level discharge structure at cell 5, chlorine injector equipment, and cascade aeration of effluent at outfall 001A1.

18. The City’s POTW discharges into an unnamed tributary to Fossil Creek, which flows approximately six (6) miles into the Smokey Hill River.

19. Fossil Creek and Smokey Hill River are each “navigable waters” and “waters of the United States” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362 (7), and its implementing regulation at 40 C.F.R. § 122.2.

20. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. §502(6).

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

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

23. The KDHE issued NPDES Permit No. M-SH31-002 (KS0091367) to the City for discharges from its POTW on May 20, 2009, with an expiration date of May 31, 2014 (hereafter “2009 Permit”). The NPDES Permit was reissued on June 1, 2014, with an expiration date of May 31, 2019 (hereafter “Current Permit”).

24. The City’s 2009 Permit and Current Permit authorizes Respondent to discharge pollutants only from specified point sources.

25. The City's 2009 Permit and Current Permit set effluent limitations and monitoring requirements at Outfall 001A1 for pollutants, including but not limited to, five-day Biological Oxygen Demand (BOD₅), and Total Suspended Solids (TSS), and requires monitoring for these parameters as well as others at least once per month for BOD₅ and once per month for TSS. The permit also sets limitations for effluent flow and requires daily monitoring.

26. The City's 2009 Permit and Current Permit set effluent limitations and monitoring requirements at Monitoring Location 002A1 (identified as monitoring location 003A1 in the 2009 Permit and hereafter referred to only as "002A1") for pollutants Chlorine Residual and E. coli-Colonies and requires monitoring for these parameters at least once per week for Chlorine Residual and once per month for E. coli-Colonies.

27. On January 13-15, 2015, the EPA performed an inspection of the Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). At the conclusion of the inspection, the City was issued a Notice of Potential Violation (NOPV) indicating that the inspection found that the City had violated provisions of its NPDES permit. A copy of the inspection report was sent to the KDHE and the City on or about May 11, 2015.

28. During the EPA Inspection, the inspector collected wastewater samples from the POTW, reviewed the City's records related to the NPDES permit, interviewed City personnel, and observed the POTW and the receiving stream to which it discharges.

29. By letter dated January 23, 2015, the City provided additional information to the EPA inspector regarding the matters identified in the NOPV. The City's letter indicated that the causes of some of the violations had been identified and that the City was in the process of correcting these and other noted violations.

ALLEGATIONS

Count 1- Effluent Limit Violations

30. The facts stated in Paragraphs 15-29 above are herein incorporated.

31. Based on observations documented during the EPA inspection, review of information provided by the City in response to EPA's NOPV, and review of other information reported by the City pursuant to the terms of its 2009 and Current Permits, EPA finds that the City violated the effluent limitations set forth in its NPDES Permit for BOD₅ and TSS on the following occasions.

<u>Date</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Monitored Value (mg/L)</u>	<u>Monitored Percent Exceedance</u>
October 2011	TSS	001A1	80	85	6.25%
October 2012	TSS	001A1	80	108	35.00%
November 2012	TSS	001A1	80	113	41.25%

December 2012	TSS	001A1	80	103	28.75%
January 2013	TSS	001A1	80	85	6.25%
April 2013	BOD ₅	001A1	30	32.7	9%
May 2013	BOD ₅	001A1	30	57.7	92.33%
November 2013	BOD ₅	001A1	30	43.5	45.0%
November 2013	TSS	001A1	80	82.5	3.13%
December 2013	BOD ₅	001A1	30	30.45	1.5%
July 2014	TSS	001A1	80	91.5	14.5%
September 2014	BOD ₅	001A1	30	31.3	4.33%
May 2015	BOD ₅	001A1	30	43.8	46%
June 2015	BOD ₅	001A1	30	33.9	13%
July 2015	BOD ₅	001A1	30	30.4	1%

32. The EPA inspector identified the noncompliance seen in the facility's Discharge Monitoring Reports (DMR). The EPA inspector issued an NOPV for the violations of the effluent limits.

33. EPA finds that each of Respondent's violations, as described above, are violations of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342, and implementing regulations and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2 - Compliance Schedule Violations

34. The Schedule of Compliance stipulated within the Current Permit issued to the City of Russell requires the City to install an effluent flow meter within two (2) months after the effective date of the permit, May 13, 2014. The installation of the flow meter should have occurred on or about July 13, 2014.

35. At the time of the January 13-15, 2015, EPA Inspection, the EPA inspector noted that the City had not installed the flow meter as required and issued the facility an NOPV for the violation.

36. Respondent's violations of the terms and conditions of its NPDES permit, as described above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

37. On August 17, 2015, EPA met with the Respondent. The Respondent submitted information to EPA identifying that the effluent meter was installed on March 25, 2015.

Count 3 - Monitoring Violations

38. The City's 2009 Permit and Current Permit authorize the City to discharge from the wastewater treatment facility in accordance with the effluent limitations and monitoring requirements set forth in the NPDES permit.

39. At the time of the January 13-15, 2015, EPA Inspection, the EPA inspector noted that the facility did not perform the required monitoring at location 002A1 for the months of March, November, and December 2012.

40. The EPA inspector issued an NOPV for the violation at the conclusion of the EPA field inspection on January 15, 2015.

41. Respondent's violations of the terms and conditions of its NPDES permit, as described above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

Count 4 - Failure to Report

42. The Standard Condition 4, Test Procedures, of Respondent's 2009 Permit and Current Permit require, if the Respondent monitors any pollutant at outfall 001A1, more frequently than required, the results shall be included in its DMR.

43. At the time of the January 13-15, 2015, EPA Inspection, the EPA inspector noted that the facility performed additional sample analysis yet did not report the sample results. The initial submission of these DMRs, the facility reported to KDHE that it was in compliance with the permit effluent limits. In the instances of January 2013, December 2013, and July 2014, the unreported sample resulted in the facility being out of compliance.

44. The EPA inspector issued an NOPV for the violation at the conclusion of the EPA field inspection on January 15, 2015.

45. Respondent's violations of the terms and conditions of its NPDES permit, as described above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

CONSENT AGREEMENT

46. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

47. Respondent admits the jurisdictional allegations set forth in this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding

or in any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

48. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

49. Respondent waives any right to contest the allegations set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.

50. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

51. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

52. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

53. Respondent has consented to an Administrative Order for Compliance, CWA-07-2015-0073 and certifies that it is in compliance with the terms of the Order.

54. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 53 of this Consent Agreement/Final Order.

55. Respondent consents to the issuance of the Final Order hereinafter recited and agrees to pay a mitigated civil penalty in the amount of Nine Thousand One Hundred dollars (\$9,100).

56. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Allegations.

Reservation of Rights

57. EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

58. This Consent Agreement/Final Order addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this Consent

Agreement/Final Order. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

59. Respondent shall pay a civil penalty of Nine Thousand One Hundred dollars (\$9,100) within thirty (30) calendar days of the effective date of this Final Order. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2016-00 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Melissa Bagley
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

60. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

61. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

62. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

63. This Final Order shall apply to and be binding upon Respondent, his 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 Consent Agreement/Final Order.

64. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Melissa Bagley
Assistant Regional Counsel

Date

RESPONDENT:
CITY OF RUSSELL, KANSAS

5-17-16
Date

Raymond C. Mader
Name

R.C. Mader
Signature

MAYOR
Title

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

IT IS SO ORDERED.

Date: _____

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

The Honorable Raymond (Curt) Mader
Mayor of Russell
133 West 8th Street
Russell, Kansas 67665.

In addition, I certify that I sent by first class mail a true and correct copy of the original Complaint and Consent Agreement/Final Order to:

Tom Stiles
Acting Director, Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

Dated this _____ day of _____, 2016.

Name