

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
City of Moundridge )  
P.O. Box 636 )  
225 South Christian )  
Moundridge, Kansas 67107 )  
 )  
Respondent )  
 )  
Proceeding under Section 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3) )  
 )

Docket No. CWA-07-2009-0023

FINDINGS OF VIOLATION  
AND ORDER FOR COMPLIANCE

Statutory Authority

1. The FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE (“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 an element of this ORDER, provision of information is required pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318. These authorities have been 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. Section 301(a) of the Act, 33 U.S.C. § 1311 (a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, except in compliance with, *inter alia*, Sections 307 and 402 of the Act, 33 U.S.C. §§ 1317 and 1342. Section 402 provides that pollutants may be discharged into navigable waters of the United States only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that section. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (“POTW”).

3. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. These regulations control the introduction of pollutants by industrial users into POTWs which may pass through or interfere with treatment processes of such treatment works or which may contaminate sewage sludge.

4. The General Pretreatment Regulations at 40 C.F.R. § 403.3(k) and (p) set forth definitions for interference and pass through, respectively. Specifically:

a. "Interference" is defined, in pertinent part, as a discharge of pollutants, which alone or in conjunction with other sources, inhibits or disrupts the treatment processes or operations of a POTW, and which therefore is a cause of a violation of any requirement of a POTW's NPDES permit; and

b. "Pass through" is defined, in pertinent part, as a discharge of pollutants which exits a POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with other sources, is a cause of a violation of any requirement of a POTW's NPDES permit.

5. Pursuant to 40 C.F.R. § 403.5(a), users are prohibited from introducing pollutants into a POTW which result in the "pass through" of pollutants through the POTW, or "interference" with the operations of the POTW.

6. Pursuant to 40 C.F.R. § 403.5(b)(3), users are prohibited from introducing solid or viscous pollutants into a POTW in amounts which will cause obstruction to the flow in the POTW resulting in interference.

7. Pursuant to 40 C.F.R. § 403.5(c)(2), POTWs shall develop and enforce specific effluent limits for industrial users who contribute pollutants causing interference and pass through. Additionally, POTWs shall develop appropriate changes to the POTW plant's facilities and operations necessary to ensure compliance with the POTW's NPDES permit.

8. 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, the implementing regulations, and a Memorandum of Understanding between EPA and KDHE.

9. KDHE is not approved to administer a state authorized Pretreatment program in Kansas pursuant to Section 402 of the CWA and its implementing regulations. Consequently, EPA is the Approval Authority as defined by 40 C.F.R. § 403.3(c).

#### **General Factual Allegations**

10. Respondent, the City of Moundridge, Kansas (hereafter "City" or "Respondent") owns and operates a POTW in McPherson County, Kansas ("POTW"). The City's POTW includes a wastewater treatment plant and sewage collection system, which receive wastewater from various domestic and non-domestic sources, including wastewater discharged from Respondent's facility.

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

12. The City's POTW is a "point source" that "discharges pollutants" into Black Kettle Creek, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12).

13. The Black Kettle Creek is considered a "navigable water" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

15. On or about February 1, 2007, NPDES Permit No. KS0021008 was issued to the City by KDHE pursuant to Section 402 of the Act, 33 U.S.C. § 1342 (hereafter "NPDES permit").

16. Respondent's NPDES permit established final effluent limits for, *inter alia*, BOD and Total Suspended Solids (TSS). These limits are:

Pollutant	Monthly Average, mg/l	Weekly Average, mg/l
Biochemical Oxygen Demand, BOD	30	45
Total Suspended Solids, TSS	80	120

17. Based on Discharge Monitoring Reports provided by the City to KDHE, the City has violated its NPDES monthly average permit limits four times for BOD and one time for TSS in the past five years, as described below:

Pollutant	Violation Month, Year	Monthly Average, mg/l
BOD	March 2006	31.0
BOD	May 2007	33.8
BOD	March 2008	39.0
BOD	May 2008	32.7
TSS	August 2007	108

18. Pursuant to the quarterly sampling requirements in Respondent's NPDES permit, the City sampled the POTW effluent on March 11, 2008.

19. On March 17-20, EPA inspected the City's POTW to determine the City's compliance with its NPDES permit. Pursuant to the inspection, EPA sampled the POTW effluent for three days

from discharge boxes within the plant's lagoon cells. Analysis was performed for BOD and TSS at the EPA, Region 7 laboratory.

20. Analysis of the samples taken during the City and EPA Inspections in March 2008 yielded the following results:

Pollutant Effluent	3/11/08 Sample (City) mg/l	3/18/08 Sample (EPA) mg/l	3/19/08 Sample (EPA) mg/l	3/20/08 Sample (EPA) mg/l	Average Results mg/l
Biochemical Oxygen Demand, BOD	33.4	37.9	41.5	37.7	39.0

21. Sampling data from the City and EPA identified a violation of the monthly average permit limit for BOD in March 2008.

22. During the EPA Inspection, the City's Wastewater Superintendent stated that Tortilla King routinely discharges large amounts of fats, oil and grease to the POTW. It was further stated by Respondent that these substances have caused obstruction problems in the City's sewer line.

23. The City's POTW has an estimated design treatment capacity of 320 lb/d for BOD. Based on EPA's March 2008 sampling data, Tortilla King's BOD effluent represents approximately 56 percent of the City's overall BOD design capacity, as described in the table set forth in paragraph 24:

24. Sampling data revealed that the combined BOD loading from industrial and domestic users to the City's POTW overloads the POTW's capacity for BOD by approximately 89 percent, as described below:

User	BOD Loading to POTW	POTW Loading Capacity for BOD	Percentage of POTW's Loading Capacity
Tortilla King	180 lb/d	320 lb/d	56%
Combined Industrial and Domestic Users	604 lb/d	320 lb/d	189%

25. The EPA inspection revealed that, in March 2008, discharges of BOD from Tortilla King have caused and/or contributed to the City's violations of its NPDES permit.

26. The City has not developed and enforced effluent limits for the City's industrial users and developed changes to its POTW to ensure compliance with the City's NPDES permit.

## **Findings of Violation**

### **Count I**

#### **Violations of City's NPDES Permit Limits**

27. The facts stated in Paragraphs 10 through 26, above, are hereby incorporated by reference.
28. As identified in Paragraph 21, the City violated its monthly average permit limit for BOD in at least March 2008.
29. As identified in Paragraph 17, reported discharges of BOD and TSS in excess of permit limits are violations of Respondent's NPDES permit.
30. Respondent's NPDES permit violations are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

## **Order for Compliance**

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31. Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

### **POTW Sampling and Reporting**

32. Immediately upon receipt of this Order and continuing for six months, Respondent shall begin sampling at the POTW and reporting sampling results in the following manner:
  - a. Sample the influent stream and effluent discharge point, as identified in Respondent's NPDES permit, for BOD and TSS on a weekly basis.
  - b. Sample for Oil and Grease at the influent and effluent points on a monthly basis.
  - c. Sample for E. coli at the effluent discharge point on a monthly basis.
  - d. All samples shall be grab samples taken according to 40 CFR Part 136 methods.
  - e. Sampling reports showing all sampling values shall be included with the Discharge Monitoring Reports submitted to KDHE. Copies of the reports shall be submitted by the City to EPA.

### **Development of Local Limitations for Industrial Users**

33. Within forty-five (45) days of receipt of this Order, Respondent shall submit to EPA and KDHE, specific local Pretreatment limits (hereafter, "Local Limits"), consistent with the requirements of 40 C.F.R. § 403.5(c)(2), to ensure compliance with the City's NPDES permit. The Local Limits analysis shall include the amount of plant capacity allocated to each industrial

user. The Local Limits for Industrial Users shall be subject to review and approval by EPA and KDHE in accordance with Paragraph 36, below.

#### **Implementation of Local Limitations for Industrial Users**

34. Within ninety (90) days after approval by EPA and KDHE pursuant to Paragraph 36, the City shall provide written documentation to EPA and KDHE that the specific Local Limits for industrial users have been adopted by the City, and that an enforceable mechanism has been established for each Industrial User to ensure compliance with the Local Limits limitations for that SIU. Additionally, the City shall identify any appropriate changes to the POTW Treatment Plant's facilities or operation necessary to ensure compliance with the City's NPDES permit.

#### **Approval of Submissions and Incorporation into the Order**

35. Upon receipt, EPA and KDHE will review all documents submitted by Respondent pursuant to Paragraphs 33 and 35, and approve such submittals or require modification and resubmittal of a portion or all of the documents pursuant to Paragraph 37, below. Upon approval, documents submitted under Paragraphs 33 and 35, above, or resubmitted pursuant to Paragraph 37, below, shall be deemed incorporated into and become enforceable under this Order, or at EPA's discretion, shall be incorporated into, and become enforceable under, a separate order issued under the authority of the CWA.

#### **EPA Review and Approval of Required Submittals**

36. EPA will review all proposed submittals and notify Respondent in writing of EPA's approval, disapproval or modification of the submittal, or any part thereof. Within thirty (30) days of receipt of EPA's comments pertaining to any submittal, Respondent shall amend such submittal, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submittal, it may modify and approve the same in accordance with its comments. In the event of such modification, EPA will notify Respondent of the modification(s). Upon receipt of EPA's approval or notice of modification(s), Respondent shall commence work and implement any approved submittal in accordance with the schedule and provisions contained therein. EPA approved submittals shall be deemed incorporated into and enforceable as part of this Order.

37. All documents required for submittal to EPA shall be hand delivered or sent by certified mail, return receipt requested, to the following:

Mr. Robert Bryant  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

38. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent, signed by an authorized official, that contains the following certification:

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.

## **V. General Provisions**

### **Effect of Compliance with the Terms of This Order for Compliance**

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39. Compliance with the terms of this Order for Compliance shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

40. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, State and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

41. 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 Act, 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 Act for any violation whatsoever.

### **Access and Requests for Information**

42. 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 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

### **Severability**

43. 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.

**Effective Date**

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

**Termination**

45. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
William A. Spratlin, Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

  
Chris Muehlberger  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

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 Order for Compliance Regional Hearing Clerk, United States Environmental Protection Agency, 901 N. 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Fred Wiens,  
Wastewater Superintendent  
City of Moundridge  
P.O. Box 636  
225 South Christian  
Moundridge, Kansas 67107

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Date