

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2022-0081
University Park Sewer Benefit District)	
)	COMPLAINT AND CONSENT
and)	AGREEMENT/FINAL ORDER
)	
Riley County Public Works Department,)	
)	
Respondents)	
)	
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 United States Environmental Protection Agency's ("EPA's") 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. Complainant, the EPA Region 7, and Respondents, University Park Sewer Benefit District and Riley County Public Works Department, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondents violated National Pollutant Discharge Elimination System ("NPDES") Permit No. KS0079243, issued under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

4. 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 Enforcement and Compliance Assurance Division of EPA Region 7 (“Complainant”).

Statutory and Regulatory Framework

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

6. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that Section.

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. To implement Section 402 of the CWA, 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.

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.

10. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

EPA’s General Allegations

11. Respondents are political subdivisions of a State, so are persons within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. Respondents are the owner and/or operator of a POTW in Riley County, Kansas, that includes a wastewater treatment facility (“WWTF”), consisting of an activated sludge package treatment plant, disinfection with sodium hypochlorite, and a sludge detector/sludge holding basin, which receives wastewater from a small residential community next to Tuttle Creek Reservoir.

13. The POTW discharges to Tuttle Creek Reservoir.

14. 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.

15. Respondents' discharge of pollutants requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. On October 14, 2015, the KDHE issued NPDES permit number KS0079243 to Respondents for the POTW pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 ("2015 NPDES Permit"), which was effective November 1, 2015, through October 31, 2020, and on October 28, 2020, the KDHE reissued the permit ("2020 NPDES Permit"), effective November 1, 2020, through October 31, 2025.

17. Part A of the 2015 NPDES Permit contains limitations for discharges of effluent from the POTW through Outfall 001 to Tuttle Creek Reservoir, as summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	7-Day Average	
Biochemical Oxygen Demand ("BOD")	mg/L	30.0	45.0	Monthly
Total Suspended Solids ("TSS")	mg/L	30.0	45.0	Monthly
		Monthly Average	Daily Maximum	
Ammonia (Sept. 1 – March 31)	mg/L	17.3	17.3	Monthly
Ammonia (June)	mg/L	15.1	17.3	Monthly
Ammonia (July and August)	mg/L	12.6	17.3	Monthly
		Daily Minimum	Daily Maximum	
pH	S.U.	6.0	9.0	Monthly
		Monthly Average		
Summer <i>E. coli</i> (April 1 through Oct. 31)	Col. / 100 ml	160		Monthly
Winter <i>E. coli</i> (Nov. 1 through March 31)	Col. / 100 ml	2358		Monthly

18. Part A of the 2020 NPDES Permit contains limitations for discharges of effluent from the POTW through Outfall 001 to Tuttle Creek Reservoir, as summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	7-Day Average	
Biochemical Oxygen Demand ("BOD")	mg/L	30.0	45.0	Monthly
Total Suspended Solids	mg/L	30.0	45.0	Monthly

("TSS")				
		Monthly Average	Daily Maximum	
Ammonia (Nov. 1 – March 31)	mg/L	18.1	18.1	Monthly
Ammonia (April)	mg/L	12.1	13.5	Monthly
Ammonia (May)	mg/L	8.8	9.4	Monthly
Ammonia (June)	mg/L	5.9	6.2	Monthly
Ammonia (July and August)	mg/L	4.8	4.9	Monthly
Ammonia (September)	mg/L	7.4	7.8	Monthly
Ammonia (October)	mg/L	14.2	16.3	Monthly
		Daily Minimum	Daily Maximum	
pH	S.U.	6.0	9.0	Monthly
		Monthly Average		
Summer <i>E. coli</i> (April 1 through Oct. 31)	Col. / 100 ml	160		Monthly
Winter <i>E. coli</i> (Nov. 1 through March 31)	Col. / 100 ml	2358		Monthly

19. Part E of the 2020 NPDES Permit contains a schedule of compliance providing that if ongoing operational improvements do not bring the facility into compliance with 2020 NPDES Permit ammonia, TSS, and *E. coli* limits by February 1, 2022, the facility shall complete plant upgrades necessary to meet those limits by October 31, 2025.

20. On May 17 through 19, 2021, EPA performed a Compliance Sampling Inspection of Respondents' WWTF ("Inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

21. During the Inspection, the EPA inspector reviewed documents, including facility DMR data, observed the facility, and collected influent and effluent samples.

22. Respondents provided information to the inspector by letter dated July 23, 2021, following the Inspection.

EPA's Specific Allegations

23. All facts stated above are re-alleged and incorporated herein by reference.

Count 1
Failure to Comply with Effluent Limitations

24. Part A of the 2015 and 2020 NPDES permits establish discharge limits and monitoring requirements, as described in Paragraphs 17 and 18, above.

25. Respondents' POTW effluent exceeded the BOD, TSS, ammonia as nitrogen, and *E. coli* limits, and fell below the minimum pH, of the applicable NPDES permit on multiple occasions from December 2015 to August 2021 as identified in Attachment A.

26. Each failure to comply with 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 Properly Conduct Analyses

27. Paragraph 4 of the Standard Conditions for Kansas Water Pollution Control and NPDES Permits, as incorporated into the 2020 NPDES Permit, states that "[a]ll analyses required by this permit shall conform to the requirements of 40 CFR Part 136, unless otherwise specified, and shall be conducted in a laboratory accredited by the Department. For each measurement or sample, the permittee shall record the exact place, date, and time of measuring/sampling; the date and time of the analysis, the analytical techniques or methods used, minimum detection or reportable level, and the individual(s) who performed the measuring/sampling and analysis" as well as the results.

28. During the Inspection, a representative of the EPA found that the pH standards and the chlorine secondary standards in the facility laboratory were out of date, that the facility's analytical equipment was not calibrated according to the manufacturer's instructions, and that facility personnel did not keep records of when the equipment was calibrated.

29. Each failure to comply with Standard Conditions 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).

CONSENT AGREEMENT

30. Respondents and the EPA agree to the terms of this Consent Agreement/Final Order.

31. Respondents consent to receiving the filed CAFO at the following address:
choleman@rileycountyks.gov.

32. Respondents admit the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

33. Respondents neither admit nor deny the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

34. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth above, and their right to appeal this Consent Agreement and the accompanying proposed Final Order.

35. Respondents 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.

36. Nothing contained in this Compliant and Consent Agreement/Final Order shall relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

37. Respondents consent that the civil penalty payment made pursuant to this Complaint and Consent Agreement/Final Order will not be deducted for purposes of federal taxes.

38. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

39. Respondents certify by the signing of this Consent Agreement/Final Order that Respondents are currently in, and will remain in, compliance with the terms of the Administrative Order on Consent (Docket No. CWA-07-2022-0014).

40. The effect of settlement described is conditioned upon the accuracy of Respondents' representations to EPA, memorialized in this Consent Agreement.

41. Each signatory to this Consent Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order. Respondents agree, in settlement of the claims alleged in this Consent Agreement and Final Order, to pay a civil penalty of **one thousand seven hundred fifty dollars (\$1,750)** within thirty (30) days of the effective date of this Final Order. The payment of penalties must reference docket number CWA-07-2022-0081 and be remitted to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

42. 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.

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

44. The 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.

45. With respect to matters not addressed in this Consent Agreement/Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

46. This Consent Agreement/Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

47. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

For the Complainant, U.S. Environmental Protection Agency:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

For Respondent University Park Sewer Benefit District:

Signature 

Date 8-25-2022

Name Grey McKinley

Title Chairman

For Respondent Riley County Public Works Department:

Signature John Elterman

Date 8-15-2022

Name John Elterman

Title Director of Public Works

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Karina Borromeo
Regional Judicial Officer

Date: _____

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Consent Agreement and Final Order by electronic mail to:

Representative(s) for Respondents:

John Ellermann
Director, Riley County Public Works
jellermann@rileycountyks.gov

Robert Blume
Lead Operator, University Park Sewer Benefit District
bob.blume47@gmail.com

Clancy Holeman
Riley County Counselor
choleman@rileycountyks.gov

Representatives for Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Seth Draper
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
draper.seth@epa.gov

Date: _____

Signature: _____