



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1201 Elm Street, Suite 500, Dallas, Texas 75270-2102
FINDINGS OF VIOLATION AND COMPLIANCE ORDER
Docket Number: CWA-06-2020-1750; NPDES Permit Number: NM0020681

STATUTORY AUTHORITY

The following findings are made, and Order issued, under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), Section 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

FINDINGS

1. The City of Truth or Consequences ("Respondent") is a municipality chartered under the laws of the State of New Mexico, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this Order ("all relevant times"), Respondent owned or operated a wastewater treatment plant ("WWTP"), located at 1595 Animal Shelter Road, Sierra County, New Mexico ("facility"), and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility acted as a "point source" of a "discharge" of "pollutants" with its wastewater discharge to the receiving water named the Rio Grande in Segment 20.6.4.103 of the Rio Grande Basin, which is a "water of the United States," within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 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 the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. NM0020681 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on October 1, 2016 and expires on September 30, 2021. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Part I.A of the permit ("Monitoring and Reporting Requirements") requires Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility's compliance or noncompliance with the permit and applicable regulations. The permit also requires Respondent to file with the New Mexico Environment Department ("NMED") and EPA certified Discharge Monitoring Reports ("DMRs") of the results of monitoring, and Noncompliance Reports when appropriate.

9. The permit contains "Effluent Limitations and Monitoring Requirements" that place certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Attachment A, which is incorporated herein by reference.

10. Certified DMRs filed by Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in the permit, as specified in Attachment B, which is incorporated herein by reference.

11. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit was a violation of the permit and Section 301 of the Act, 33 U.S.C. § 1311.

12. Each violation of the permit conditions or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

SECTION 309(a)(3) COMPLIANCE ORDER

Based on the foregoing Findings and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), EPA hereby orders Respondent to take the following action:

A. Take such measures as are necessary to comply with all permit conditions, including "Effluent Limitations and Monitoring and Reporting Requirements," no later than thirty (30) days from the effective date of the Order.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written report detailing the specific

actions taken to correct the violations cited in Attachment B and an explanation as to why such actions are anticipated to be enough to prevent recurrence of these or similar violations.

C. Within thirty (30) days of the effective date of this Order, Respondent shall provide written certification to EPA Region 6 signed by an authorized official [as defined in 40 C.F.R. § 122.22(a)(3)] that the violations cited herein have been corrected and the facility is in compliance with the requirements of the permit.

D. In the event Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within thirty (30) days of the effective date of this Order, provide EPA a detailed plan for the elimination of the cited violations within the shortest possible time. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include: 1) any construction plans or changes in operations and maintenance; 2) a cost analysis to implement the plan; 3) a schedule for implementation of the plan; and 4) measures to prevent these or similar violations from recurring.

E. Any approved compliance schedule will be incorporated and re-issued in a future administrative order.

F. If Respondent would like to arrange a meeting with EPA to discuss the allegations in this Section 309(a)(3) Compliance Order, it should contact EPA within forty-five (45) days of the effective date of this Order. The meeting will be held at the Region 6 offices located at 1201 Elm Street, Suite 500, and the Respondent can provide any information it believes is relevant to this Order. Respondent shall submit to EPA all information or materials it considers relevant to EPA at least ten (10) days prior to the meeting.

G. To arrange a meeting, or to ask questions or comment on this matter, please contact Mr. Anthony M. Loston, of my staff, at (214) 665-3109.

H. Any information or correspondence submitted by Respondent to EPA under this Order shall be addressed to the following:

Ms. Nancy Williams
Water Enforcement Branch (ECD-WR)
U.S. EPA, Region 6
williams.nancy@epa.gov

GENERAL PROVISIONS

Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Issuance of this Section 309(a)(3) Compliance Order shall not be deemed an election by EPA to waive any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Section 309(a)(3) Compliance Order or the Act may result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remain in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by Respondent.

June 15, 2020

Date

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division