



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

FINDINGS OF VIOLATION AND COMPLIANCE ORDER
Docket number: CWA-06-2023-1818; Facility Permit Number: AR0021776

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), by 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 Nashville (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 in the City of Nashville (facility) located at 743 Highway 27 South, in Nashville, Howard County, Arkansas and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2. The mailing address for the Respondent is 426 North Main Street, Nashville, AR 71852.
3. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” with its final wastewater discharge to Mine Creek thence to Millwood Lake, thence to Little River, thence to the Red River in Segment 1C of the Red River 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. Section 402 of the Act, 33 U.S.C. § 1342, authorizes states to request approval from EPA to administer their own permit programs for discharges into navigable waters within their jurisdiction. Pursuant to this provision, the State of Arkansas requested approval from EPA to administer its own permit program for discharges into navigable waters within Arkansas, and such approval was granted by EPA on November 1, 1986. Therefore, pursuant to the State’s permit program, the Arkansas Department of Environmental Quality (ADEQ) issued NPDES permits. Violation of a NPDES permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
8. Respondent applied for and was issued NPDES Permit No. AR0021776 (permit) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective December 1, 2020, and expires November 30, 2025. 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.
9. Part I.A. of the permit places certain limitations on the quality and quantity of effluent discharged by Respondent.
10. The permit also includes “Effluent Limitations and Monitoring Requirements” that require Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures to determine the facility’s compliance or noncompliance with the permit and applicable regulations.
11. Part I.A. of the permit requires Respondent to monitor once per quarter for Whole Effluent Toxicity (WET) that includes reporting regarding test species *Pimephales promelas*. Under Part I.A. of the permit, a No Observed Effect Concentration (NOEC) of 78 percent for the sublethal endpoint is the effluent limitation for *Pimephales promelas*.
12. The permit also requires Respondent to file with ADEQ certified Discharge Monitoring Reports (DMRs) of the results of monitoring, and Noncompliance Reports when appropriate. Respondent is required to provide the WET results in its DMRs pursuant to Parts II.9. and III.C.
13. The permit states in Part II.9.A.iii that “[w]hen the effluent fails the chronic endpoint below the required limit specified in Item A.i., the permittee shall be considered in violation of this permit limit and the [testing] frequency for the affected species will increase to monthly until such time compliance with the NOEC effluent limitation is demonstrated for a period of three

consecutive months, at which time the permittee may return to the testing frequency stated in Part I of this permit.”

14. Certified DMRs submitted by Respondent to ADEQ show that Respondent failed to comply with the Chronic WET limits for *Pimephales promelas*’ sublethal endpoint. Respondent reported a NOEC of 59 percent in July 2021, 44 percent in December 2022, and 44 percent in January 2023 for the sublethal endpoint. Therefore, Respondent violated the conditions of the permit by not meeting the WET permit limits.

15. Respondent conducted the required quarterly WET testing pursuant to Part I.A of the permit in July 2021 which demonstrated significant sub-lethal effects to the *Pimephales promelas* test species. The second subsequent retest was not conducted in September 2021.

16. Respondent violated Part II.9.A.iii. of the permit by failing to initiate a second retest in September 2021.

17. 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.

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 actions:

A. Within thirty (30) days of receipt of this Order, Respondent shall provide a written plan and schedule for complying with the permit’s WET requirements described above.

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

Paul Juarez
Water Enforcement Branch (ECDWA)
juarez.paul@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, judicial, civil, or criminal action to seek penalties, fines, or other relief 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.

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.

October 17, 2023

Date

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division