



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

MAR 04 2011

Mr. Karl Mueldener, Director
Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

Re: **Objection for Kansas City Waste Water Treatment Facility Draft Permit**

Dear Mr. Mueldener:

On November 22, 2010, the Environmental Protection Agency (EPA), Region 7, received a draft National Pollutant Discharge Elimination System (NPDES) permit (permit number KS0038962) for the City of Kansas City, Kansas, (the City) Kaw Point wastewater treatment facility (Kaw Point facility). This permit was public noticed by the Kansas Department of Health and Environment (KDHE) on November 25, 2010. Based on EPA's review of the draft permit and KDHE's response to EPA's previous "interim objection" (as discussed below), Region 7 is hereby objecting to the proposed permit, pursuant to 40 C.F.R. § 123.44.

A. Background

KDHE's draft permit for the Kaw Point facility failed to specify an average weekly limit for bacteria (E. coli) as required by 40 CFR § 122.45(d). 40 C.F.R. § 122.45(d) states:

*Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall **unless impracticable** be stated as:*

- (1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and*
- (2) Average weekly and average monthly discharge limitations for POTWs.*

The Merriam-Webster dictionary defines "impracticable" as something which is "incapable of being performed or accomplished by the means employed or at command." The draft permit or Fact Sheet for the permit did not contain any explanation of why KDHE considered it "impracticable" for the permit to not contain an average weekly limit for bacteria.



The Kaw Point plant receives flows from a combined sewer system, and accordingly, the Kaw Point permit must comply with the requirements of EPA's 1994 CSO Policy, as incorporated by Section 402 of the CWA. In 2000, the City submitted a Long Term Control Plan (LTCP) to KDHE describing its evaluation of its combined sewer collection system. By correspondence dated August 7, 2006, KDHE provided the City a detailed critique of the inadequacies of the 2000 LTCP. KDHE requests for revision to the 2000 LTCP included, but were not limited to: revisions to properly evaluate monitoring and treatment costs for discharges from CSOs; revisions to properly evaluate transportation and storage costs of wet weather flows to eliminate discharges from CSOs; the financial capability of the City to implement required improvements to the combined sewer collection system; and EPA also has reviewed the City's LTCP and has determined that the 2000 LTCP is inadequate and requires revision.

The draft permit for the Kaw Point facility authorized the use of a line (001C1), at wet weather flows greater than 48 million gallons per day (MGD) to route flows around the facility's secondary treatment units before discharge. Such a "diversion" around secondary treatment equals a "bypass" that is subject to the requirements of 40 C.F.R. 122.41(m). It is clear that wet weather events cause inflow and infiltration of large quantities of rain water into the facility's combined sewer collection system, which in turn flows to the Kaw Point facility, and that these flows ultimately result in bypasses around the facility's secondary treatment units. However, an adequate evaluation of the facility's combined sewer collection system has not yet been completed, nor has the 2000 LTCP been updated consistent with KDHE or EPA's previous comments to the City.

40 C.F.R. § 123.44(i) and the Memorandum of Agreement (MOA) between EPA and KDHE allowed EPA to provide comments or objections to draft permits during the thirty (30) day public comment period, which concluded on December 25, 2010. On December 22, 2010, EPA issued an "interim objection" to KDHE requesting that KDHE provide an explanation regarding the draft permit's failure to specify a weekly average limit for bacteria, as required by 40 C.F.R. 122.45(d). EPA had also previously provided KDHE an example of an EPA approved method by which average weekly limits for bacteria could be calculated.

On February 3, 2011, KDHE provided a response to EPA's interim objection which stated that average weekly limits for bacteria were not necessary and that such limits would "create an unnecessary burden and additional expenses especially for small communities." However, KDHE's response did not provide an explanation of why it was not possible, or alternatively stated, why it was "impracticable" to develop such average weekly limits for bacteria, as required by 40 C.F.R. § 122.45(d), even though a method to calculate such limits had previously been provided to KDHE by EPA. Lastly, despite KDHE's own 2006 statements to the City on the inadequacies of the current (2000) LTCP to identify and address issues in the Kaw Point facility's combined sewer collection system, KDHE's response stated that the "current Long Term Control Plan addresses, and the updated Long Term Control Plan will address the no feasible alternatives requirement."

B. Basis of Objection and Request for Changes to Draft Permit

First, the Region is objecting to the draft permit for the Kansas City facility because of its failure to specify an average weekly limit for bacteria, as required by 40 C.F.R. 122.45(d). The Region requests that the draft permit be revised to specify average weekly limits for bacteria as required by 40 C.F.R. § 122.45(d). In developing such an average weekly limit, KDHE may utilize the method previously provided by EPA to KDHE, or defensible alternate method.

The Region is also objecting to the November 2010, Kaw Point draft permit based on the draft permit's wording which improperly authorized the use of the bypass line (001C1) as a condition of the permit. The Region believes that this issue may be corrected if KDHE revises the draft permit consistent with the discussions and exchanges between KDHE and Regional staff that occurred during the public comment period and after the December 22, 2010, objection. Accordingly, EPA requests that KDHE formally submit to EPA a version of the draft permit that has been revised consistent with these previous staff level discussions.

Lastly, the Region is objecting to the permit based on the KDHE's statements in the draft permit's Fact Sheet that KDHE is approving the anticipated use of the bypass line based on a finding that there are "no feasible alternatives" to the use of the bypass. EPA believes this conclusion is inconsistent with KDHE's August 7, 2006, comments to Kansas City concerning the 2000 LTCP. In that correspondence, KDHE discusses the 2000 LTCP's inadequate evaluation of the Kaw Point Facility's collection system, and the fact that improvements to the collection system and the Kaw Point facility have not yet been completely implemented. Accordingly, EPA believes that the current record does not support KDHE's conclusion that there are "no feasible alternatives" to the use of the bypass line (001C1), and any conclusion that there are no feasible alternatives to the use of the bypass line will be premature until a complete factual record has been established.

In order to create a complete record to support that there are "no feasible alternatives" to the use of the bypass line 001C1, the City should fully respond to previous comments from EPA and KDHE on the LTCP that direct the City to evaluate possible improvements at the Facility and the Facility's collection system, in order to minimize CSOs and wet weather impacts. To date, this evaluation has not yet been completed by the City, nor have such improvements been completed.

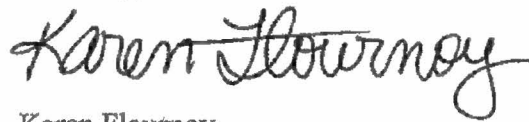
C. Opportunity to Request Hearing

Pursuant to 40 C.F.R. § 123.44(e), within ninety (90) days of your receipt of this letter, KDHE may either revise the Kaw Point facility's draft permit and Fact Sheet to meet EPA's objections and then resubmit the revised permit and Fact Sheet to EPA for review and approval, or alternatively, request a public hearing on EPA's grounds for this objection. If KDHE does not revise the permit or request a public hearing, pursuant to 40 C.F.R. § 123.44(h)(1), EPA may move forward to issue the permit for the City of Kansas City facility. If a public hearing is

requested and EPA does not withdraw its objection, pursuant to 40 C.F.R. § 123.44(h)(2), KDHE must revise the permit to meet EPA's objections and then resubmit the revised permit to EPA for review, or EPA may move forward to issue the permit for the Kaw Point facility.

Pursuant to 40 C.F.R. § 123.29 and KAR 28-16-62(a)(1), the Kaw Point permit may not be issued by KDHE until the objections outlined by this letter have been resolved. The Region hopes to resolve this objection by additional discussions with both KDHE and the City. If you have any questions of the above, please contact Tanya Nix, of my staff, at 913-551-7710, or Howard Bunch, attorney, at 913-551-7879.

Sincerely,

A handwritten signature in black ink that reads "Karen Flournoy". The signature is written in a cursive style with a large, sweeping "K" and "F".

Karen Flournoy
Acting Director
Water, Wetlands and Pesticides Division

cc: Mike Tate, KDHE

M. Reza Kamyab, Plant Manager, Water Pollution Control, 7th Floor, 701 North 7th Street, Kansas City, Kansas 66101