



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 28 2011

Richard Christopher, Manager
New Castle Sanitation Authority
110 East Washington Street
P.O. Box 1404
New Castle, Pennsylvania 16101

Re: Administrative Order for Compliance and Request for Information, EPA Docket No. CWA-03-2011-0272DN

Dear Mr. McCurdy:

Enclosed is an Administrative Order ("Order") and information request issued this date pursuant to Section 308 and Section 309(a) of the Clean Water Act (the "Act"), as amended, 33 U.S.C. § 1318 and 1319(a). Please provide a signed written confirmation of your intention to comply with this request to Chad D. Harsh, EPA Region III, at the address provided in Section VI, within five (5) days of receipt of this Information Request.

Your responses to this request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the request within fifteen (15) days unless otherwise stated. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the request. Section IV, Paragraph 40 provides a Statement of Certification for this purpose.

You should carefully read the contents of the enclosed Order and information request, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and information request may result in further enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

If you require any information or assistance regarding this matter, please contact Chad D. Harsh, U.S. EPA Region III, NPDES Enforcement, 215-814-2633 or Stephen Field, Water Branch Chief in the Office of Regional Counsel, 215-814-2603.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa".

Jon M. Capacasa, Director
Water Protection Division

Enclosures



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cc: Jeff Means, Executive Assistant
Office of Field Operations, PADEP

John Holden, Environmental Program Manager
Water Management Northwest Regional Office
PADEP





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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IN THE MATTER OF:

New Castle Sanitation Authority
110 East Washington Street
P.O. Box 1404
New Castle, Pennsylvania 16101

Docket No. CWA-03-2011-027

FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE
AND REQUEST FOR INFORMATION

Respondent

I. STATUTORY AUTHORITY

1. This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308 and 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1318 and 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
 - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;

- (b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (c) Any requirement under Section 308 of the CWA, 33 U.S.C. § 1318; or
 - (d) Carrying out Sections 305, 311, 402, 404, and 504 of the CWA, 33 U.S.C. §§ 1315, 1321, 1342, 1344, and 1364.
4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in an NPDES permit.
 5. "Discharge of a pollutant" includes any addition of any pollutant or combination of pollutants to waters of the United States from any point source. 40 C.F.R. § 122.2.
 6. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, sludge, biological material and industrial, municipal and agricultural waste.
 7. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure..."
 8. EPA is the pretreatment "Approval Authority", as that term is defined by 40 C.F.R. § 403.3(c), in the Commonwealth of Pennsylvania.
 9. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Pennsylvania Department of Environmental Protection ("PADEP") to issue NPDES permits within the Commonwealth of Pennsylvania ("PA").

III. EPA FINDINGS AND ALLEGATIONS

10. New Castle Sanitation Authority ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
11. Respondent, at all times relevant to this Order, has or operated a publicly owned treatment works, as that term is defined by 40 C.F.R. § 403.3, located New Castle, PA ("the Facility").
12. Respondent operated the Facility pursuant to NPDES Permit No. NPDES Permit No. PA00227551 ("Permit").
13. Upon information and belief, the New Castle POTW had been accepting oil and gas exploration and/or production wastewaters for treatment.
14. Respondent's pretreatment report for calendar year 2009 indicates that it is believed that gas brine wastes were impacting the treatment plant resulting in "higher sludge blanket

levels that are more easily upset and washed out during rainfall induced high flow events.”

15. A January 31, 2011 letter from EPA notified Respondent, among other things, the need to characterize the waste, the Authority’s responsibility to evaluate the need for local limits for new waste before allowing the discharge of the waste, and the need to develop a site-specific inhibition criteria for the pollutants of concern.
16. Respondent received a letter from PADEP dated March 18, 2011 requesting that Respondent sample its effluent for total dissolved solids (TDS), pH, alkalinity, chloride, sulfate, bromide, Gross Alpha, Radium 226 and 228, and Uranium.
17. EPA conducted a NPDES file review in the Northwest and Southwest Regional Offices of Pennsylvania Department of Environmental Protection April 3-8, 2011.

IV. VIOLATIONS

18. The allegations of Paragraphs 1 through 17 are realleged and incorporated herein by reference.
19. Respondent is the owner and operator of, and NPDES permittee for, the Facility and is legally responsible for all discharges from the Facility.
20. Part A, Section 1 of the Permit prescribes effluent limitations for the Respondent’s discharge.
21. A summary table of effluent limit exceedences, as reported on discharge monitoring reports (“DMRs”) by Respondent, is attached as Appendix A.
22. The effluent exceedences identified in Appendix A constitute violations of the Permit and Section 301(a) of the Act.

V. CONCLUSION OF LAW

23. Respondent’s failures to comply with Permit effluent limitations constitute a violation of Section 301 of the CWA, 33 U.S.C § 1311.

VI. ORDER AND REQUEST

AND NOW, this 28th day of September, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), to undertake the following activities and pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to provide the following information within fifteen (15) calendar days upon receipt of this Order and Request, unless otherwise specified.

24. Respondent shall immediately discontinue its acceptance of oil and gas exploration and/or production wastewater until an evaluation of the program can be completed as

described below.

25. Within fifteen (15) days upon receipt on this Order and Request, Respondent shall submit a plan for the development of local limits for pollutants of concern associated with oil and gas exploration and/or production wastewater.
26. Within fifteen (15) days upon receipt on this Order and Request, Respondent shall submit a plan for the development of site-specific inhibition criteria for the pollutants of concern associated with oil and gas exploration and/or production wastewater.
27. Respondent shall immediately take whatever action necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and come into compliance with all of the applicable requirements of the Permit and the Act and its implementing regulations.
28. Respondent shall begin composite sampling, of a minimum of 8-hour duration, of its effluent for the analysis for TDS, chloride, bromide, sulfate, Gross Alpha, Radium 226 and 228 and Uranium upon receipt of this Order and Request and biweekly thereafter. Samples should be analyzed by an accredited laboratory using EPA-approved methods. Respondent shall submit to EPA and PADEP the additional monitoring data of their effluent with its monthly DMRs to characterize its water quality.
29. Respondent will not be required to perform the sampling and analysis prescribed in paragraph 28 above, if within 5 days of receipt of this Order and Request, Respondent certifies that it will not accept any oil and gas exploration and/or production wastewater. To meet the requirements of this paragraph, Respondent must sign and return to EPA the attached certification (Attachment B).
30. Within fifteen (15) days upon receipt on this Order and Request, Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations. Respondent shall submit copies of all investigations conducted as a result of the effluent limit exceedences listed in Appendix A and copies of documents related to such investigation or provide explanation why such investigations were not conducted.
31. The report referenced in Paragraph 30 shall specify whether the acceptance of oil and gas exploration and/or production wastewater caused or contributed to the effluent limit exceedences listed in Attachment A.
32. Respondent shall provide EPA with an electronic spreadsheet that summarizes the information recorded in the Facility's monthly DMRs for the years 2006-2011.
33. Respondent shall provide EPA with the day, month, and year when the Facility first accepted oil and gas exploration and/or production wastewater .
34. Respondent shall provide EPA with the notification the Facility gave to PADEP

regarding the Facility's acceptance of oil and gas exploration and/or production wastewater referenced in Paragraph 33.

35. Respondent shall provide EPA with documentation of PADEP's authorization for the Facility's acceptance of oil and gas exploration and/or production wastewater referenced in Paragraph 33.
36. Respondent shall provide EPA with all characterization evaluations of incoming wastes with source identification since the date referenced in Paragraph 33.
37. Respondent shall provide EPA with copies of all permit amendment applications including, but not limited to, applications submitted to notify the permitting authority of a proposed change in the type wastes received at the Facility since the date referenced in Paragraph 33.
38. Respondent shall provide EPA with the Facility's standard operating procedures for sampling the hauled wastewater at the truck unloading zone.
39. Respondent shall provide EPA with the Facility's method for determining whether or not to accept hauled wastewater at the truck unloading zone based on the sampling procedure referenced in Paragraph 38.
40. Respondent shall provide EPA with all investigations to causes for effluent exceedences in Appendix A.
41. Within five (5) calendar days of the effective date of this Order and Request, Respondent shall submit to EPA a certification, signed by a responsible official of Respondent's intent to comply with this Order and Request.
42. Unless otherwise stated, Respondent shall provide EPA all submissions pursuant to this Order and Request within fifteen (15) calendar days of receipt of this Order and Request. All submissions pursuant to this Order and Request shall be signed, and dated by a responsible official of the Respondent, and include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete.

As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the responsible official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is 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.

By _____
(Signature)

(Title)

(Date)

The submission and certification shall be submitted to:

Chad D. Harsh
NPDES Enforcement Branch
Mail Code 3WP42
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. GENERAL PROVISIONS

43. Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial action initiated by EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
44. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, 33 U.S.C. § 1319, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act 33 U.S.C. § 1368.
45. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with this Order and Request and with any applicable permit and the Act and its implementing regulations. EPA reserves all existing inspection authority.
46. This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or ordinance.

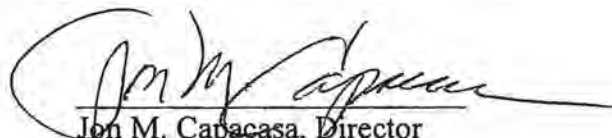
47. Violation of the terms and conditions of this Order and Request constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

VIII. EFFECTIVE DATE

This ORDER AND REQUEST is effective upon receipt.

Date:

9/28/11



Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

I certify that New Castle Sanitation Authority, which operates under NPDES Permit No. PA00227551 will not accept any oil and gas exploration and/or production wastewaters at this facility. For the purpose of this certification, oil and gas exploration and/or production wastewaters includes, but is not limited to: ground water produced from coal seams, shale formation ground water, well drilling fluids, fracturing fluids, shale gas produced water, water produced from conventional and unconventional wells, pit water, containment pond water, and storage pond water.

If New Castle Sanitation Authority desires to accept oil and gas exploration and/or production wastewater after signing this certification, New Castle Sanitation Authority will, prior to acceptance: notify EPA Region III and PADEP of its intent, take all actions necessary to comply with the Clean Water Act (CWA) and receive all necessary approvals from EPA and PADEP.

As a responsible official, I certify that this statement is true and correct. I am aware that violations of CWA are punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment.

By _____
(Signature)

(Title)

(Date)

Appendix A. Monthly Discharge Monitoring Report Effluent Violations

Month, Year	Outfall	Parameter	Effluent Limit	Effluent Measurement
March 2009	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	58 mg/L
March 2009	001	Maximum Average Total Suspended Solids Loading	6380 lbs/day	9399 lbs/day
March 2009	001	Monthly Average Total Suspended Solids	30 mg/L	37 mg/L
May 2009	001	Monthly Average Total Suspended Solids	30 mg/L	34 mg/L
June 2009	001	Monthly Average Total Suspended Solids	30 mg/L	38 mg/L
July 2009	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	64 mg/L
July 2009	001	Monthly Average Total Suspended Solids	30 mg/L	45 mg/L
August 2009	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	61 mg/L
August 2009	001	Monthly Average Total Suspended Solids	30 mg/L	50 mg/L
September 2009	001	Monthly Average Total Suspended Solids	30 mg/L	37 mg/L
September 2009	001	Monthly Average Total Residual Chlorine	0.11 mg/L	0.20 mg/L
October 2009	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	46 mg/L
October 2009	001	Monthly Average Total Suspended Solids	30 mg/L	31 mg/L
January 2010	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	60 mg/L
January 2010	001	Maximum Average Total Suspended Solids Loading	6380 lbs/day	8080 lbs/day
January 2010	001	Monthly Average Total Suspended Solids	30 mg/L	40 mg/L
February 2010	001	Monthly Average Total Suspended Solids	30 mg/L	33 mg/L
March 2010	001	Monthly Average Total Suspended Solids	30 mg/L	38 mg/L
March 2010	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	55 mg/L
November 2010	001	Monthly Average Total Suspended Solids	30 mg/L	34 mg/L
November 2010	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	55 mg/L
December 2010	001	Maximum Weekly Average Total Suspended Solids	45 mg/L	56 mg/L
December 2010	001	Maximum Average Total Suspended Solids Loading	6380 lbs/day	8736 lbs/day