

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-309(a)-20-007
)	
City of San Juan Bautista)	
San Juan Bautista, California)	ADMINISTRATIVE ORDER ON
)	CONSENT
Respondent.)	
)	<i>Proceeding under Section 309(a) of the Clean</i>
)	<i>Water Act, 33 U.S.C. § 1319(a)</i>
)	
)	

ADMINISTRATIVE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1. Section 309(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 9, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 9.

II. STATUTORY AND REGULATORY FRAMEWORK

3. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

4. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United in accordance with specified limits and conditions.

5. The State of California has an EPA-authorized NPDES program approved by EPA pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), and issues NPDES permits, including permits for discharges to the waters of the United States from publicly-owned wastewater treatment plants, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards (RWQCBs).

6. The Central Coast RWQCB issued to the City of San Juan Bautista, CA (City or Respondent), a NPDES Permit, CA0047902/Order No. R3-2009-0019, on May 8, 2009 with an effective date of May 9, 2009 and an expiration date of May 9, 2014 (the Permit). A permit renewal application has been received by RWQCB, and the Permit has been administratively continued until a new permit can be issued.

7. Section 301(b) of the Act, 33 U.S.C. § 1311(b), authorizes EPA to establish nationally applicable effluent limits for point sources, which are incorporated into the discharger's permit along with any other requirements established pursuant to the Act and supporting regulations.

8. Permittees must monitor discharges and report the results in their Discharge Monitoring Reports (DMRs), as authorized by Section 308(a) of the CWA, 33 U.S.C. § 1318(a), and required by the CWA's implementing regulations at 40 C.F.R. §§ 122.41j, 122.44i, and 122.48, and the Permit.

III. FINDINGS OF FACT AND DETERMINATIONS OF LAW

9. Pursuant to CWA § 502(4), 33 U.S.C. § 1362(4), Respondent is a municipality formed under the laws of California and is a "person" within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5).

10. At all times relevant to this action, Respondent owned and operated the San Juan Bautista Wastewater Treatment Plant located at 1120 Third Street, San Juan Bautista, CA 95045, latitude 36°50'58.11" N, longitude 121°32'41.90" W (the SJB WWTP or the Facility).

11. At the Facility, Respondent collects and treats sanitary sewage from a population of about 2,500. The SJB WWTP receives domestic sewage and serves three vegetable processors located outside of City limits. The facility has a stated design capacity of 0.27 million gallons per day (MGD). The SJB WWTP provides tertiary treatment of wastewater. Treatment currently comprises a comminutor and headworks, a pond operated as a sequencing batch reactor (SBR), a second pond for sludge storage and denitrification, coagulation and pressure sand filtration, and disinfection with Ultraviolet (UV) light at the Facility.

12. Effluent from the Facility discharges from one outfall (Outfall No. 001) to an unlined, intermittently flowing drainage channel that travels approximately ¼ mile before flowing into San Juan Creek, a tributary to the San Benito River. The channel and Outfall No. 001 are each a "point source" within the meaning of CWA § 502(14), 33 U.S.C. § 1362(14).

13. Effluent from the Facility includes unionized ammonia, sodium, chloride, Total Coliform, biochemical oxygen demand ("BOD"), total suspended solids, and total dissolved solids and therefore contains "pollutants," as defined by CWA § 502(6), 33 U.S.C. § 1362(6).

14. Discharges from Outfall No. 001 flow into an unlined, intermittently flowing drainage channel that travels approximately ¼ mile before flowing into San Juan Creek, a tributary to the San Benito River, a “navigable water” and a “water of the United States” within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7) and implementing regulations.

15. Respondent’s discharge of pollutants into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA § 502(12), 33 U.S.C. § 1362(12).

16. Respondent’s discharges are authorized pursuant to its NPDES Permit, as identified above in paragraph 6, as long as they comply with the terms of the Permit.

17. The Permit requires, inter alia:

- a. Permit Section IV lists specific effluent limitations and discharge specifications for Outfall No. 001 and requires Respondent to maintain compliance with certain enumerated effluent limitations. See Table 5, Permit Section IV.A.1.a.
- b. Permit Section II.R. incorporates Standard and Special Provisions as Attachment D.
 - i. Attachment D.1.D. requires the Discharger to properly operate and maintain all facilities and systems of treatment and control in a manner to achieve compliance with effluent limits.
 - ii. Attachment D.IV.A. requires records of all monitoring information, including all calibration and maintenance records to be retained for a period of at least three years.
 - iii. Attachment D.V.F. requires the Discharger to give notice to Central Coast RWQCB as soon as possible of any planned physical alterations or additions to the Facility.

18. On June 24, 2019, representatives of the EPA performed an inspection of the Facility to evaluate the Respondent’s compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342; the regulations promulgated thereunder at 40 C.F.R. § 122 and the Permit. The EPA’s inspection report was provided to Respondent on October 17, 2019 and is attached hereto as Exhibit 1.

19. As described in more detail in Exhibit 1, the EPA inspectors observed the following:

- a. Pond 2 did not appear to be providing full treatment because of gaps in the baffles demonstrating poor operation and maintenance. The gaps may allow some flows to flow through the treatment cells without adequate residence time;
- b. The floating media in Cell 2C was no longer floating and thus, unlikely to be achieving expected nitrogen reduction;
- c. The City had made changes to the treatment protocols since its Permit application to the Central Coast RWQCB (for example, redirecting flow from the SBR Pond to Cell 2C rather than Cell 2A) but had not communicated the change to the Central Coast RWQCB as required by the Permit;

- d. Calibration records were not available for EPA inspectors at the time of the inspection;
- e. At the time of the inspection, chemicals were being stored in drums onsite without proper labels or secondary containment.

20. Based on a review of reporting records, EPA inspectors also identified numerous effluent limitation exceedances at the Facility for unionized ammonia, sodium, chloride, Total Coliform, total suspended solids, BOD, and total dissolved solids, as summarized in Exhibit 2. The City has been out of compliance with its chloride effluent limitations since the Permit was issued on May 9, 2009. There have been nine (9) exceedances of the Median Total Coliform limit and seven (7) exceedances of the Instantaneous Maximum Total Coliform limit since November 2018. Recent Total Coliform violations may be caused by an inadequate or malfunctioning UV disinfection system and presents potential risks to public health.

21. As a result of the City's discharges of pollutants in excess of the effluent limitations in the Permit, its failure to properly monitor and maintain records, and its failure to adequately operate and maintain its treatment system, EPA finds that the City has been and continues to be in violation of its Permit, and thus in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C §§ 1311(a), 1342.

IV. ORDER FOR COMPLIANCE ON CONSENT

22. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), IT IS HEREBY ORDERED and AGREED TO:

- a. Work to be Performed: The City shall take all measures necessary to fully and properly comply with all terms and conditions of the Permit, or future NPDES permits issued to it by the Central Coast RWQCB, which shall include, at a minimum:
 - i. By September 1, 2020, the City will certify to EPA that baffles in Pond 2 have been repaired so that they function to prevent short circuiting;
 - ii. By September 1, 2020, the City will certify to EPA that the UV disinfection system is functioning at full capacity;
 - iii. By September 15, 2020, the City shall submit to EPA a Master Plan for Water and Wastewater (the Master Plan) for review and comment. The Master Plan shall be developed based on the Scope presented to EPA by the City during a meeting which took place on March 17, 2020;
 - iv. By October 15, 2020, the City shall submit to EPA for review and approval, a statement of the option from the Master Plan that it has selected to implement to achieve compliance with Permit conditions (the Compliance Project) and shall provide written justification for choosing the selected option outlined in the Compliance Project. EPA may disapprove the Compliance Project in whole or in part and require revisions to it. If EPA disapproves the Compliance Project, the City shall

address all deficiencies identified by EPA and resubmit the Compliance Project for EPA's approval within fifteen (15) days of receipt of EPA's disapproval;

1. Final Compliance Project Deadline: The selected Compliance Project must ensure that the SJB WWTP will be in full compliance with the Permit or any future NPDES permit by no later than December 31, 2023.
- v. Phase I Compliance Project: By November 15, 2020, the City shall submit a schedule for the first phase for the design and construction of the compliance option outlined in the Compliance Project (the Phase I Compliance Project Schedule) to EPA for review and approval. The Phase I Compliance Project shall include milestones for funding the design and construction of the Compliance Project, and the Phase I Compliance Project Schedule shall ensure completion of Phase I Compliance Project by no later than November 30, 2020. EPA may disapprove the Phase I Compliance Project Schedule in whole or in part and require revisions to it. If EPA disapproves the Phase I Compliance Project Schedule, the City shall address all deficiencies identified by EPA and resubmit the Phase I Compliance Project Schedule for EPA's approval within fifteen (15) days of receipt of EPA's disapproval. The Phase I Compliance Project Schedule shall include proposed completion dates for the following milestones but may include other milestones not captured below:
1. Deadline for the completion of a Feasibility Study and Financial Plan for the selected Compliance Project; and
 2. Deadline for completion of a Capital Improvement Plan (CIP) showing how development and implementation of the preferred Compliance Project has been or will be funded.
- vi. Phase II Compliance Project: By December 31, 2020 the City shall submit a schedule for the second phase of the design and construction of the compliance option outlined in the Compliance Project (the Phase II Compliance Project Schedule) to EPA for review and approval. The Phase II Compliance Project shall include milestones for designing and obtaining regulatory approvals needed to complete the Compliance Project, and the Phase II Compliance Project Schedule shall ensure completion of Phase II Compliance Project by no later than July 1, 2022. EPA may disapprove the Phase II Compliance Project Schedule in whole or in part and require revisions to it. If EPA disapproves the Phase II Compliance Project Schedule, the City shall address all deficiencies identified by EPA and resubmit the Phase II Compliance Project Schedule for EPA's approval within fifteen (15) days of receipt of EPA's disapproval. The Phase II Compliance Project Schedule shall include proposed completion dates for the following milestones but may include other milestones not captured below:

1. Deadline for the solicitation of bids from construction contractors;
 2. By March 30, 2021, award and execute contracts for design, environmental studies, and legal team;
 3. By March 30, 2022, design of the Compliance Project shall be 50% complete, initial studies for the National Environmental Policy Act (NEPA) and/or California Environmental Quality Act (CEQA) will be in process, applications for any additional required licenses or permits will have been submitted, and third-party agreements will be in final draft form;
 4. By the Phase II Compliance Project deadline, the City shall have completed initial studies for NEPA and CEQA, obtained any additional required licenses or permits, completed and executed third-party agreement(s), and the design of Compliance Project will be at 80% completion and be prepared for bidding.
- vii. Phase III Compliance Project: By August 1, 2022, the City shall submit a schedule for the third phase for the design and construction of the compliance option outlined in the Compliance Project (the Phase III Compliance Project Schedule) to EPA for review and approval. The Phase III Compliance Project shall include milestones for completion of design and construction of the Compliance Project, and the Phase III Compliance Project Schedule shall ensure completion of Phase III Compliance Project by no later than December 31, 2023. EPA may disapprove the Phase III Compliance Project Schedule in whole or in part and require revisions to it. If EPA disapproves the Phase III Compliance Project Schedule, the City shall address all deficiencies identified by EPA and resubmit the Phase III Compliance Project Schedule for EPA's approval within fifteen (15) days of receipt of EPA's disapproval. The Phase III Compliance Project Schedule shall include proposed, final completion dates for the following milestones but may include other milestones not captured below:
1. By October 1, 2022, the Compliance Project design will be 100% complete, design approvals from third parties will be received, and the Compliance Project will be bid for a minimum of six weeks;
 2. By December 31, 2022, the Compliance Project construction contract will be awarded and executed by the City;
 3. By February 1, 2023, the Compliance Project will break ground;
 4. By November 1, 2023, the Compliance Project will be nearing 75% completion;
 5. By December 1, 2023, construction of the Compliance Project will be complete, and the City will take possession of any new infrastructure.

- viii. Upon approval by EPA, all submittals required under Section IV of this Order, including but not limited to the EPA-approved design and construction schedule, shall be deemed incorporated into, and enforceable pursuant to, this Order.

b. Required Reporting:

- i. The City shall submit compliance reports to EPA on a bi-yearly basis (the Bi-Yearly Compliance Report), with the first report to be due on September 1, 2020 and subsequent reports due bi-yearly thereafter (i.e. the first business day on or after March 1, 2021, September 1, 2021, March 1, 2022, and so on). Each Bi-Yearly Compliance Report shall discuss the status of compliance with each effluent parameter limit in the Permit, the progress towards completion of the Work to be Performed according to Section IV.22.a. of this Order, and any updates regarding the completion of the Compliance Project.
- ii. Upon notification to the Respondent, EPA may require additional status reports, or fewer status reports, and/or request additional documentation to support the Bi-Yearly Compliance Report for the purpose of documenting the City's progress towards achieving compliance with this AOC and/or with the Permit requirements.
- iii. The City shall continue to submit Bi-Yearly Compliance Reports in accordance with the schedule described in Section VI.22.b.i., of this Order until this AOC has been terminated pursuant to the terms of Section V.24. of this Order. Each Bi-Yearly Compliance Report shall be submitted to EPA consistent with Sections IV, V, and VI of this Order. Each Bi-Yearly Compliance Report must identify any major milestone that the City expects will not be met in the coming six months, any that were missed in the preceding six months, and the date they are expected to be met. Nothing in this Section modifies or affects the City's obligations to submit reports required by the Permit, or to comply with any other reporting requirements under federal, state, or local law.
- iv. The City shall schedule a meeting with EPA on a quarterly basis to discuss ongoing efforts to comply with the requirements of this Order (the Quarterly Meetings). The first meeting shall follow the submission of the Bi-Yearly Report (e.g. after September 1, 2020), with the following Quarterly Meetings to be scheduled on or immediately after December 1, 2020, March 1, 2021, June 1, 2021, September 1, 2021, and so on. The Respondent should make every reasonable effort to schedule the Quarterly Meetings to be held within fifteen (15) calendar days after the submission of the Bi-Yearly Compliance Report and within fifteen (15) calendar days of the other two quarters (e.g. December 1, 2020, June 1, 2021, and so on). The City shall continue to schedule Quarterly Meetings with EPA in accordance with this Section until this AOC has been terminated pursuant to the terms of Section V.24 of this Order.

c. Qualifications for Work:

- i. All requirements of this AOC described in Section IV shall be done by and under the supervision of persons with sufficient education, experience, and expertise to adequately and responsibly do so. Within thirty (30) days of the effective date of this Order, the City shall submit the qualifications of the proposed team and/or supervisor for each task, clearly describing each team member's responsibilities, for EPA's review.
- ii. Within 30 days of selecting design and construction teams to implement the alternative chosen from the Master Plan, the City shall submit the qualifications of the proposed team and/or supervisor for each task, clearly describing each team member's responsibilities, for EPA's review.
- iii. Within one hundred and eighty (180) days from the Effective Date of this AOC, the City shall ensure that any operator placed in direct responsible charge of the SJB WWTP possesses the equivalent of a state issued Grade III or greater wastewater operator certification. Within one hundred and eighty (180) days from the Effective Date of this AOC, the City will submit to EPA the name and verification of certification of the certified operator in charge of the SJB WWTP. Within ten (10) days of any change in the personnel in direct responsible charge of the SJB WWTP, the City will submit to EPA the name and verification of certification of the new, certified operator. The City shall have the option to use a contract operator to run the SJB WWTP, provided such contractor has the requisite certification equivalent to a state issued Grade III or greater wastewater operation certification.

V. FINAL REPORT AND TERMINATION OF THE AOC

23. Within thirty (30) calendar days after Respondent has fully completed and implemented the actions required by Section IV of this AOC, Respondent shall submit for the EPA's review and approval a final report (Final Report) that includes a description and timeline of all actions which have been taken to achieve compliance with this AOC and the CWA.

24. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondent and this AOC shall be deemed terminated.

25. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondent, provide a list of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, Respondent shall implement the modified requirement(s) and submit a modified Final Report.

VI. SUBMISSIONS AND RECORD RETENTION

26. Respondent shall submit all written communications, including the Bi-Yearly Compliance Reports and any additional progress reports, electronically. Respondent shall submit all required reports and plans to the EPA and the Central Coast RWQCB in an electronic format that allows them to be searchable by key word. Respondent shall send all submittals to the following e-mail addresses. Submissions will be deemed made on the date they are sent electronically.

For EPA:

Adam Howell
U.S. Environmental Protection Agency
Enforcement Division (ENF 3-1)
75 Hawthorne Street
San Francisco, CA 94105
Tel. (415) 947-4248
Fax. (415) 947-3519
Howell.Adam@epa.gov

For Central Coast RWCQB:

Katie DiSimone
Central Coast Regional Water Quality Control
Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Tel. (805) 542-4638
Katie.DiSimone@Waterboards.ca.gov

27. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

“I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.”

28. Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this AOC, until five (5) years after termination of this AOC. Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this AOC.

VII. MODIFICATION

29. Any request for modification by Respondent shall include the reason(s) for the request and a timeline for completion. Modification of this AOC shall be in writing and shall take effect only upon approval by the EPA. Failure by Respondent to implement any modified requirement(s) shall be a violation of this AOC.

VIII. GENERAL PROVISIONS

30. This AOC is binding on Respondent and its officials, officers, directors, partners, agents, employees, attorneys, successors and assigns, and on all persons, independent contractors, consultants and contractors acting in concert with Respondent.

31. Respondent shall provide a copy of this AOC to any successor in interest to its control, operation, or any other interest in any portion of its Facility at least thirty (30) calendar days prior to the transfer, and shall simultaneously notify the EPA in writing, via e-mail, that such notice has been given. Within fourteen (14) calendar days after the effective date of this AOC or the date of contracting, whichever is later, Respondent shall provide a copy of this AOC to all contractors and/or consultants to perform any of the work described in Section IV. Respondent shall condition the transfer of control, operation or any other interest in any portion of its Facility and any contract related to the performance of the work described in Section IV upon successful execution of this AOC.

32. This AOC is not and shall not be construed to be a permit under the CWA, nor shall it in any way relieve or affect Respondent's obligations under the CWA, or any other applicable federal or state laws, regulations, and/or permits. Compliance with this AOC shall be no defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

33. This AOC shall in no way affect the rights of the EPA or the United States against any person not a party hereto.

34. This AOC shall in no way limit or affect the EPA's authority to obtain information, and to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement.

35. The provisions of this AOC shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

36. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in Section III of this Order, except to the extent that those allegations provide the EPA with a jurisdictional basis to enforce this AOC.

37. Respondent consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) AOC. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may

have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

38. Failure to comply with the terms of this AOC may result in liability for statutory civil penalties under CWA Section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, a United States District Court may impose such penalties if the court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this AOC. In determining the amount of any penalty the court will consider the seriousness of the violations, the economic benefit (if any) resulting from the violations, any history that Respondent may have of such violations, any good faith efforts that Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as justice may require.

39. Issuance of this AOC is not an election by the EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA. The EPA reserves all available legal and equitable rights and remedies to enforce any violations cited in this AOC, and the right to seek recovery of any costs and attorney fees incurred by the EPA in any actions against Respondent for non-compliance with this AOC.

40. In accordance with CWA § 309(a)(4), 33 U.S.C. § 1319(a)(4), the EPA will provide notice and a copy of this AOC to the State of California upon execution.

41. The undersigned signatory for Respondent certifies that he or she is authorized to execute this AOC and legally bind the Respondent.

IX. EFFECTIVE DATE

42. This AOC shall become effective on the date it is signed by the EPA.

IN THE MATTER OF:

City of San Juan Bautista, San Juan Bautista, California
DOCKET NO. CWA-309(a)-20-007

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT

Mary Vazquez Edge
Mayor, City of San Juan Bautista

Date

IN THE MATTER OF:

City of San Juan Bautista, San Juan Bautista, California
DOCKET NO. CWA-309(a)-20-007

IT IS SO AGREED AND ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9

Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

Date