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PRETREATMENT COMPLIANCE INSPECTION

ORANGE COUNTY SEWER DISTRICT #1, NEW YORK

Report Date: November 22, 2022

Inspection Date: September 21, 2022

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1.0 Introduction

On September 21, 2022, the United States Environmental Protection Agency (EPA), Region 2 and EPA contractor, PG Environmental, (hereinafter, collectively, the EPA inspection team) conducted a pretreatment compliance inspection (PCI) of the Orange County Sewer District #1, New York's (District's) pretreatment program. The following are the primary representatives who participated in the inspection:

District Representatives:	Anthony Griffin, Principal Sanitary Engineer, AGriffin@orangecountygov.com Jim Justvig, Camo Pollution Control (contract operator), Chief Operator, jjustvig@orangecountygov.com
NYSDEC Representative:	Ryan O' Mara, Professional Engineer I, ryan.omara@dec.ny.gov
EPA Representatives:	Christy Arvizu, Environmental Scientist, arvizu.christy@epa.gov Murray Lantner, Environmental Engineer, lantner.murray@epa.gov
EPA Contractors:	Chuck Durham, PG Environmental, Director of Pretreatment Services, chuck.durham@pgenv.com Sirese Jacobson, PG Environmental, Environmental Scientist, sirese.jacobson@pgenv.com

The purpose of the PCI was to evaluate the District's compliance with the General Pretreatment Regulations for Existing and New Sources of Pollution at 40 CFR Part 403 and the "Pretreatment Program Implementation Requirements" as outlined in the District's New York State Pollutant Discharge Elimination System (SPDES) permit (Permit or NY0027901) issued by the New York State Department of Environmental Conservation (NYSDEC).

Inspection Procedure

Upon arrival, and prior to conducting the PCI, each member of the EPA inspection team presented credentials to Mr. Griffin and Mr. Justvig. An opening conference was conducted, during which the overall objectives of the PCI and the plan for conducting the inspection were discussed.

The PCI included an interview with the Mr. Griffin and Mr. Justvig about the District's implementation of its approved pretreatment program, significant industrial user (SIU) file reviews, and a site visit of the Village of Kiryas Joel Water Department, which is an SIU currently operating under an expired discharge permit, issued by the District.

At the conclusion of the PCI, the EPA inspection team, conducted a closing conference with Mr. Griffin and Mr. Justvig to discuss the preliminary findings of the PCI and discussed the process for providing a written report to the District. The District was informed that all findings are preliminary. The EPA inspection team requested a number of documents, during the closing conference which were provided by the District on October 12, 2022. Documents provided included the District's pretreatment program approval letter from EPA Region 2, Frankie's Car Wash Administrative Order, BYK's current permit, and the Village of Kiryas Joel Water Plant expired permit, plant backwash improvements engineering report, a SNC AO issued by the District, and a copy of the formal request

from EPA Region 2 for information as issued to the Village of Kiryas Joel.

History and Background
The Orange County Sewer District #1 – Harriman Sewage Treatment Plant (STP) is a publicly owned treatment works (POTW) operated under SPDES permit number NY0027901 which authorizes the POTW to discharge treated wastewater to the Ramapo River. The Harriman STP provides advanced activated sludge and tertiary treatment. The Harriman STP has a design capacity of 6.0 million gallons per day (MGD) and an average flow of 4.9 MGD and receives wastewater from the Towns of Monroe and Chester, and the Villages of Monroe, Kiryas Joel, South Blooming Grove, Woodbury, and Chester. The District does not accept hauled waste at its STP.

Condition B of the Pretreatment Program Implementation Requirements in the District's SPDES permit (pages 10 and 11) requires the District to implement a POTW pretreatment program in accordance with 40 CFR Part 403 and as set forth in its approved pretreatment program. The District received approval from EPA for its industrial pretreatment program on July 8, 2008.

At the time of the PCI, the District's industrial user (IU) inventory consisted of the following three SIUs:

- 1 CIU:
  - BYK USA, Inc. subject to 40 CFR Part 414
- 2 non-categorical SIUs:
  - Frankie's Car Wash
  - Village of Kiryas Joel Water Department

2.0 Inspection Observations

The EPA inspection team made the following observations relative to the District's pretreatment program implementation.

2.1 Nondomestic Discharger Characterization

The District identifies new industrial users in its service area by driving around the service area. The interjurisdictional agreement between the District and its satellite communities requires satellite communities to notify the District of new industrial users. The District also has meetings with the satellite communities monthly to discuss pretreatment. The District identifies changes in wastewater discharges at existing industrial users through annual inspections and sampling. In addition, the SIU permits require the permittees to notify the District of significant changes.

In response to the 2017 dental rule, the District representatives stated that they identified all of the dental facilities in the service area and had received most, but not all, of the one-time certification reports from these facilities.

2.2 SIU Permits/Control Mechanisms

As indicated previously, the District has three SIUs. The EPA inspection team reviewed the files for all three SIUs, including the permits identified below:

1. BYK USA, Inc. (permit # 003-13; ***Appendix A***)
2. Frankie's Car Wash (permit # 011-2017; ***Appendix B***)
3. Village of Kiryas Joel Water Department (permit # 005-09; expired January 31, 2012; ***Appendix C***)

The EPA inspection team reviewed the SIU permits to verify that all required control mechanism elements as outlined in 40 CFR § 403.8(f)(1) were present. The EPA inspection team observed the following as they relate to the aforementioned District-issued industrial user permits:

1. The SIU permits were signed by both the District and the permittee. A permit signed by both the District and permittee suggests that the permit is a contract agreed upon by both parties. A contract is not considered a control mechanism. The permit should be a control mechanism issued by the District which contains conditions and requirements placed on the SIU.
2. The SIU permits do not clearly describe the designated sampling locations. It was observed that the Frankie's Car Wash permit lists the sampling location as the "sampling manhole" and the BYK USA, Inc. permit lists the sampling location as "End of Process/Point of Discharge" and also refers to a "sampling manhole". Neither permit provides additional detail sufficient to locate the actual sampling point.
3. The SIU permits require composite samples but do not specify whether the samples must be collected as 24-hour flow- or time-proportional composite samples.
4. The SIU permits require the permittee to notify the District of violations within 24 hours, but do not specify that the permittee must notify the District of violations within 24 hours <u>of becoming aware of the violation</u>.
5. The SIU permits contain record retention requirements which specify that the period of retention may be extended during any ongoing litigation but do not state that the period of retention may also be extended at the request of the District or EPA.
6. The SIU permits include the requirement for notification of significant change in discharge, which reads "[a]ny industrial facility expansions, production increases or process modifications which result in new, different or increased discharges of pollutants must be reported by submission of revised Wastewater Survey Forms." However, this requirement in the permit does not mirror the federal regulations. The SIU permits state that the permittee must report "any industrial facility expansions, production increases or process modification which result in new, different or increased discharges of pollutants."
7. The SIU permits do not include the requirement notification of changes affecting the potential for a slug discharge.
8. The SIU permits do not include bypass notification requirements.

9. The SIU permits contain conditional toxic organic management plan (TOMP) requirements. Implementation of a TOMP in lieu of monitoring for TTO is not an alternative standard for all SIUs – this is only an alternative standard in specific categorical pretreatment standards, such as the electroplating and metal finishing categories. This condition is not applicable for non-categorical SIUs or those CIUs not subject to specific pretreatment standards which allow for this substitution.

10. The Village of Kiryas Joel Water Department has been discharging to the Harriman STP without an active SIU permit since 2012. After the SIU's discharge permit expired on January 31, 2012, the District reissued a permit to the SIU with an effective date of February 1, 2012 and an expiration date of January 31, 2015; however, the District did not receive a signed permit back from the SIU, as is the District's policy. District staff stated the SIU refuses to acknowledge and comply with permit requirements. The SIU has failed to submit the permit fee, conduct self-monitoring and submit period compliance reports to the District. Refer to observation #3 in Section 2.3 and observation #2 in Section 2.4 below for additional information related to this observation.

11. The District did not have a signed copy of the expired Village of Kiryas Joel Water Department permit onsite. The District issued a discharge permit, containing the District authorized representative's signature, to the Village of Kiryas Joel Water Department. However, the permittee did not return to the District the permit containing the permittee's signature.

12. The Village of Kiryas Joel Water Department's permit effective date (January 31, 2009) was listed as three months prior to the issuance date (March 19, 2009). The District cannot enforce compliance with permit conditions if the District has not yet made the SIU aware of permit conditions and requirements by issuing the permit to the SIU.

13. During the interview, the District representative stated that BYK USA, Inc. is required to implement a slug discharge control plan; however, the permit does not contain a permit condition requiring implementation of a slug discharge control plan. Furthermore, the EPA inspection team did not observe a plan in the file documents provided.

14. The BYK USA, Inc. permit states that the effluent concentration limits at end of process are based on 40 CFR Part 414; however, the permit does not specify the applicable subpart or whether the CIU is a new source or existing source. The EPA inspection team observed the effluent limits contained in the permit are consistent with those in 40 CFR § 414.111 (Subpart K).

2.3 Compliance Monitoring

For files reviewed for the period of January 2020 – August 2022, the EPA inspection team observed the following:

1. The SIU files did not contain documentation of inspections performed by the District. The District representative stated that he performs inspections at least once per year but does not document these inspections.

2. The EPA inspection team did not observe an evaluation of the need for SIUs to develop a slug discharge control plan in the SIU files.

3. The District did not inspect or sample the Village of Kiryas Joel Water Department in between January 2020 – August 2022, which is the timeframe covered in the record review as part of this PCI. The District representatives stated that the last inspection of the SIU was performed on May 10, 2010. The District's semi-annual pretreatment program reports submitted to EPA Region 2 during this period state "approval not granted from the V-KJ Water Dept. to complete facility inspection and sampling." As the control authority, the District has the authority to inspect and sample any nondomestic users discharging to the POTW and do not need approval from the discharger.

4. The BYK USA, Inc. representative signing the required reports included in the file was not the representative listed as the contact on the cover letter.

2.4 Enforcement

For files reviewed for the period of January 2020 – August 2022, the EPA inspection team observed the following:

1. Frankie's Car Wash has not submitted a periodic compliance report to the District since March 2020. The District issued a notice of violation (NOV) and notice of SNC (***Appendix D***) on November 30, 2020, for failure to submit a periodic compliance report for the 2nd quarter of 2020 and for exceedances of chromium, copper, iron, lead, manganese, phenolics, and zinc from April 2019 through June 2020. The facility did not resample to show compliance with these effluent limits.

   On April 18, 2022, the District issued an Administrative Order (AO; ***Appendix D***) to Frankie's Car Wash for the effluent limit exceedances listed in the observation above, failure to demonstrate compliance with the requirements of the November 30, 2020 NOV, and failure to submit periodic compliance reports for the second, third, and fourth quarters of 2020 and all quarters in 2021. The AO requires the SIU to pay administrative fines for violations identified in the AO as well as submit documentation specified in the AO, conduct resampling activities, and perform an investigation to determine the source of parameters exceedances and prepare a correction action plan to ensure compliance with these effluent limits. The industrial user has missed multiple deadlines listed in the AO and has not yet submitted a periodic compliance report to demonstrate compliance with the effluent limits in its discharge permit.

2. As stated earlier in the report, the Village of Kiryas Joel Water Department has been discharging to the POTW since 2012 without a permit. The District representative stated that the District has published the SIU in the newspaper for SNC each year since expiration of the discharge permit, but has not taken enforcement action for this unpermitted discharge.

3. For the period October 1, 2020 – June 30, 2021, the District determined that the Village of Kiryas Joel Water Department was in SNC for "failure to submit an executed industrial wastewater permit and permit fee…, failure to submit periodic compliance

report forms, and failure to grant access to OCSD #1 to complete the required annual inspection and testing of the discharge from the water treatment plant." The District also determined that Frankie's Car Wash was in SNC for effluent limit exceedances, late reporting, and failure to accurately report noncompliance. These SIUs had not returned to compliance for these past violations at the time of the PCI and, as a result, were still in SNC.

4. BYK USA, Inc. exceeded its copper and zinc limits in samples collected on May 13, 2021. The file did not contain documentation that the CIU notified the District of the violation. In addition, resampling was performed in September 2021, three months after the analytical laboratory report date of June 6, 2021. The file did not contain documentation that the District took enforcement action for failure to notify the District of a violation within 24 hours of becoming aware of the violation and failure to resample and submit results to the District within 30 days of becoming aware of the violation.

2.5 Recordkeeping

Hard copies of records such as enforcement actions (e.g., NOVs and AOs), periodic compliance reports, and hard copy responses from industrial users are maintained on-site. Paper records for SIUs are maintained in separate folders. Based on the file storage observed, the District maintains records for at least five years. However, the EPA inspection team noted the following observations related to recordkeeping.

1. As stated in Section 2.3 above, the District does not document annual inspections of its SIUs.
2. As stated in Section 2.3 above, the District has not documented its evaluation of the need to develop a slug discharge control plan for each SIU.

2.6 Industrial User Site Visits

The EPA inspection team performed a walk-through of the Village of Kiryas Joel Water Department. At the time of the site visit, the District representatives stated that they were not comfortable leading an inspection of the SIU. Therefore, EPA was unable to gain insight into the District's industrial user inspection procedures as part of this PCI. The District representative called the permittee's contact informing them that the EPA inspection team would be arriving onsite to perform a walk-through. The facility representative responded that someone would be onsite to accompany the EPA inspection team. However, when the EPA inspection team and District representatives arrived onsite, no facility representatives were present. The EPA inspection team was finally able to get in contact with the Village of Kiryas Joel Water Department's contract operator, Shaun Jellema (H2O Innovations) who agreed to meet the EPA inspection team onsite. Mr. Jellema explained the equipment and processes performed onsite. Water is pumped from the wells into the pH tank where sodium hypochlorite is added. Water is then pumped from the inlet tank into the filtration system where potassium permanganate is added before the processed water goes out to the distribution lines. The filter backwash is pumped into the clarifier. Water from the clarifier is returned to the pH tank, while the sludge is pumped into the sand filter beds outside. When asked during the site visit, the contract operator could not provide the flow volume from the filter backwash process.

3.0 Summary

3.1 Potential Non-Compliance Items

1. The SIU permits issued to Frankie's Car Wash and BYK USA, Inc. were signed by both the District and the permittee. The federal regulations at 40 CFR § 403.8(f)(1)(iii) require that the POTW control through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable Pretreatment Standards and Requirements. As stated in the EPA's *Industrial User Permitting Manual*, "The use of contracts or contractual agreements as a control mechanism does not provide a POTW with the requisite penalty authority for an approved program and are not an adequate control mechanism for POTWs with an approved program. A control mechanism signed by the permittee may be deemed a contract and thus lose its effectiveness as a control mechanism [53 FR 40574-40577; October 17, 1988]."
2. The SIU permits issued to Frankie's Car Wash and BYK USA, Inc. do not clearly describe the designated sampling locations, nor do the SIU permits specify whether the composite samples required must be collected as 24-hour flow- or time-proportional composite samples. The federal pretreatment regulations at 40 CFR § 403.8(f)(1)(iii)(B)(4) require that control mechanisms include self-monitoring, sampling, reporting, notification and recordkeeping requirements, including identification of the sampling location, sampling frequency, and sample type. The federal pretreatment regulations at 40 CFR § 403.12(b)(5)(ii) require that samples be collected that are representative of daily operations.
3. The SIU permits issued to Frankie's Car Wash and BYK USA, Inc. require the permittee to notify the District of violations within 24 hours, but do not specify that the permittee must notify the District of violations within 24 hours of becoming aware of the violation. The federal pretreatment regulations at 40 CFR § 403.12(g)(2) state that "…if sampling performed by an Industrial User indicates a violation, the User shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation."
4. The SIU permits issued to Frankie's Car Wash and BYK USA, Inc. contain record retention requirements which specify that the period of retention may be extended during any ongoing litigation but do not state that the period of retention may also be extended at the request of the District or EPA. The federal regulations at 40 CFR § 403.8(f)(1)(iii)(B)(4) require that permits include record-keeping requirements. The federal regulations at 40 CFR § 403.12(o)(2) require that records must be maintained for at least three years. 40 CFR § 403.12(o)(2) also states the retention period is extended during unresolved litigation regarding the discharge of pollutants by the IU or POTW or when requested by the Director or the [EPA] Regional Administrator.
5. The SIU permits issued to Frankie's Car Wash and BYK USA, Inc. include the requirement for notification of a significant change in discharge. However, this requirement in the permit does not mirror the federal regulations. The federal requirements at 40 CFR § 403.12(j) require industrial users to notify the control authority "in advance of any substantial change

in the volume or character of pollutants in their discharge." This notification requirement includes decreases in volume or pollutants discharged.

6. The SIU permits issued to Frankie's Car Wash and BYK USA, Inc. do not include the requirement for the SIUs to notify the District of changes affecting the potential for a slug discharge. The federal regulations at 40 CFR § 403.8(f)(2)(vi) require SIUs to notify the POTW immediately of any changes at its facility affecting the potential for a slug discharge.
7. The SIU permits issued to Frankie's Car Wash and BYK USA, Inc.do not include bypass notification requirements. The federal regulations at 40 CFR § 403.8(f)(1)(iii)(B)(4) require permits to include "[s]elf-monitoring, sampling, reporting, notification, and record keeping requirements." The federal regulations at 40 CFR § 403.17 require industrial users to notify the District of bypasses.
8. The SIU permits reviewed contain conditional toxic organic management plan (TOMP) requirements. This condition is not applicable for non-categorical SIUs or those CIUs (such as BYK) not subject to specific pretreatment standards which allow for this substitution. 40 CFR § 403.8(f)(1)(iii)(B)(3) requires individual control mechanisms to contain effluent limits based on applicable general Pretreatment Standards in 40 CFR Part 403, categorical Pretreatment Standards, local limits, and state and local law.
9. The Village of Kiryas Joel Water Department has been discharging to the POTW without an active SIU permit since 2012. In addition, the District did not have a District-signed copy of the expired Village of Kiryas Joel Water Department permit onsite. The federal regulations at 40 CFR § 403.8(f)(1)(iii) require that the POTW control through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable Pretreatment Standards and Requirements.
10. The District representative stated that BYK USA, Inc. is required to implement a slug discharge control plan; however, the permit does not contain a permit condition requiring implementation of a slug discharge control plan. The federal pretreatment regulations at 40 CFR § 403.8(f)(1)(iii)(B)(6) state that control mechanisms must include requirements to develop a slug discharge control plan if the POTW has determined that a slug discharge control plan is necessary. 40 CFR § 403.8(f)(2)(vi) lists the required components of a slug discharge control plan.
11. The industrial user permit for BYK USA, Inc. did not specify the applicable categorical subpart or Pretreatment Standard (e.g., Pretreatment Standards for Existing Sources or Pretreatment Standards for New Sources). The federal regulations at 40 CFR § 403.8(f)(2)(iii) require the control authority to notify industrial users of applicable pretreatment standards and requirements. 40 CFR § 403.8(f)(1)(iii)(B)(3) requires individual control mechanisms to contain effluent limits based on applicable general Pretreatment Standards in 40 CFR Part 403, categorical Pretreatment Standards, local limits, and state and local law.
12. The SIU files reviewed did not contain documentation of inspections performed by the District. In addition, the EPA inspection team observed that the District did not inspect or sample the Village of Kiryas Joel Water Department during the period reviewed (January

2020 – August 2022). The federal regulations at 40 CFR § 403.8(f)(2)(v) require the District to randomly sample and analyze the effluent from each SIU at least once a year.

13. The EPA inspection team did not observe an evaluation of the need for SIUs to develop a slug discharge control plan in the SIU files. The federal regulations at 40 CFR § 403.8(f)(2)(vi) require that the District evaluate whether each SIU needs a plan or other action to control slug discharges. The federal regulations require that for industrial users identified as significant prior to November 14, 2005, the evaluation must have been conducted at least once by October 14, 2006; additional SIUs must be evaluated within 1 year of being designated a SIU and the results of such activities shall be available to EPA upon request.
14. The District did not implement its approved enforcement response plan as required in accordance with the federal regulations at 40 CFR § 403.8(f)(5) which require that the POTW implement an enforcement response plan, including escalation of enforcement, as needed and in accordance with the enforcement response plan. The EPA inspection team observed:
    a. The District did not take enforcement against BYK USA Inc. for exceeding its copper and zinc limits in self-monitoring samples collected on May 13, 2021. BYK USA, Inc. did not notify the District within 24 hours of becoming aware of the violation and did not resample and submit the results to the District within 30 days after becoming aware of the violation.
    b. The District did not take enforcement against the Village of Kiryas Joel Water Department for discharging to the POTW since 2012 without a permit. In addition, the Village of Kiryas Joel Water Department has failed to submit the required permit fee, conduct self-monitoring and submit periodic compliance reports to the District. The District has published the Village of Kiryas Joel Water Department in the newspaper for SNC but has not taken enforcement action against the SIU.
    c. Frankie's Car Wash has missed multiple deadlines listed in the AO and has not submitted a periodic compliance report since March 2020 to demonstrate compliance with the effluent limits in its discharge permit. Considerable time elapsed between identification of noncompliance and enforcement action escalated.

3.2 Areas of Concern

1. The District representatives stated that they identified all 25 dental facilities in the service area but had not received all of the one-time certification reports from these facilities as required in accordance with 40 CFR § 441.50.
2. The Village of Kiryas Joel Water Department's permit effective date is listed three months prior to the issuance date.
3. The BYK USA, Inc. representative signing the required reports included in the file was not the representative listed as the contact on the cover letter.

4. During the site visit at the Village of Kiryas Joel Water Department, the SIU representative could not provide the flow volume from the backwash process.