

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2015-0041
THE CITY OF CRYSTAL CITY,)	
MISSOURI)	FINDINGS OF VIOLATION AND
Respondent)	ADMINISTRATIVE ORDER FOR
)	COMPLIANCE ON CONSENT
)	
Proceeding under Sections 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to the City of Crystal City, Missouri (“City” or “Respondent”), pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands, and Pesticides Division.

2. The EPA, together with the City, enter into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3. It is the parties’ intent through this agreement to address discharges of pollutants by the City into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

4. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also 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 on Consent, including, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

II. Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that Section.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

9. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding dated October 30, 1974. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

III. EPA Findings

Findings of Fact and Law

10. The City of Crystal City is a political subdivision of the state organized under the laws of Missouri, and as such is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all relevant times, the City has jointly owned and operated a wastewater treatment facility (“WWTF”) and owned and operated the City’s associated sewer collection and transmission systems, which receive and treat wastewater from residential, commercial, and industrial connections within Crystal City, Missouri, and which together are a Publicly Owned Treatment Works (“POTW”), as defined by 40 C.F.R. § 403.3(q). The City’s WWTF is operated pursuant to City ordinance by the Festus-Crystal City Sewage Treatment Commission.

12. The City’s WWTF discharges to Platin Creek, which is a “navigable water” and a “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

13. Effluent from the City's POTW is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 502(6).

14. The City's POTW is a "point source" that "discharges pollutants" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

15. The City's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. On February 1, 2008, MDNR granted NPDES Permit No. MO-0080632 (hereafter NPDES Permit), to the Festus-Crystal City Sewage Treatment Commission for discharges from the WWTF to Platin Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The NPDES Permit expired January 31, 2013 and it is administratively extended pursuant to 10 C.S.R. 20-6(10(E)).

17. On March 10 through 14, 2014, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of the City's POTW, including the City's collection and transmission systems, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its NPDES permit and the CWA.

18. During the EPA inspection described in Paragraph 17 above, the inspector reviewed the City's records related to the wastewater collection and transmission systems and conducted a visual inspection of two of the City's lift stations.

19. On or about July 15, 2014, the EPA sent the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. On or about July 29, 2014, the City submitted a response to the Request for Information.

20. The City submitted to the EPA Sanitary Sewer Overflow Reports for January 1, 2012 through July 15, 2014, as part of the City's response to the Request for Information described in Paragraph 19. The City also submitted to EPA SSO Reports for January 1, 2013 through March 14, 2014, as part of the inspection described in Paragraph 17.

Allegations of Violation

21. The facts stated in Paragraphs 10 through 20, above, are herein incorporated.

Unpermitted Discharges

22. The NPDES Permit authorizes the discharge of pollutants only from a specified point source, identified in the NPDES Permits as "Outfall 001," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permits.

23. Within the past five years, the City has discharged untreated wastewater from lift stations and/or other locations within the City's collection and transmission systems, also known as SSOs. None of the locations of these discharges are the Outfall 001 identified in the NPDES permit.

24. Upon review of the City's responses to the Request for Information described in Paragraph 20, including the reports submitted to MDNR, the City has discharged pollutants from the City's collection and transmission systems at locations other than Outfall 001 on at least 3 occasions between March 2010 and March 2014. These discharges are not permitted or otherwise authorized by the CWA.

25. The City's unpermitted discharges from its collection and transmission system described above occurred April 24, 2013, May 6, 2013, and February 25, 2014, and have been attributed to flooding of Plattin Creek with resulting infiltration into sewer manholes and/or rags or other debris introduced into the sewer by users of the 8 inch sewer line located approximately at County Road, North of VFW Drive, Crystal City, Missouri.

26. The SSOs described in Paragraphs 23 through 25, discharged untreated wastewater into Plattin Creek.

27. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Order for Compliance

Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and Respondent hereby AGREES to take, the actions described below:

28. Upon the receipt of this Order, the City shall immediately take all necessary actions to eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the CWA.

Submissions

29. The City shall submit to the EPA, with a copy to the MDNR, reports on or before January 1, 2016, and July 1, 2016, describing the actions the City has taken to the date of the report to comply with the terms of this Order. The City's report shall include, at a minimum:

- a. A description of all work completed to address and eliminate unpermitted discharges as described in Paragraph 25, above, and copies of relevant diagrams, work orders, reports, photographs and other documentation to demonstrate completion of the work;

- b. A report describing any unauthorized discharges occurring during the reporting period and specific measures taken by the City to correct and prevent recurrence of each unauthorized discharge during the reporting period; and
- c. A copy of each unauthorized discharge report submitted to MDNR during the reporting period.

30. All work performed by the City to comply with the terms of this Order shall be completed no later than July 1, 2016. If the City believes, however, that despite its best efforts it will not be able to complete work necessary to address and eliminate unpermitted discharges as described in Paragraph 25, above, by July 1, 2016, the City may, as soon as it has credible knowledge anticipating such delay, submit a petition pursuant to Paragraph 43 of this Order to the EPA, with a copy to the MDNR, for an extension of time to complete such work. The request must be in writing and must describe the reason for the anticipated delay, the steps the City has taken to mitigate the cause(s) of the delay, and a date certain by which the City expects to complete the work.

31. All submissions by the City to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify that the City of Crystal City has complied with all the applicable requirements of the Order for Compliance. I also certify under 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.

32. All documents, including certifications, required to be submitted to the EPA by this Order, shall be submitted by electronic mail to:

dillard.wayne@epa.gov

Wayne Dillard, P.E., or his successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph.

33. A copy of documents required to be submitted to the MDNR by this Order, shall be submitted by mail to:

Paul Dickerson, or his successor
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

34. After review of the information submitted by the City pursuant to the above Paragraphs, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

General Provisions

Effect of Compliance with the Terms of this Order

35. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating, an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Section 309(g)(6) of the CWA, 33 U.S.C. § 1319(g)(6), addresses the effect of this Order on subsequent actions by the EPA or the State and with respect to citizen suits.

Reservation of Rights

36. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.

37. Failure to comply with the terms of the Order may result in Respondent's liability for statutory civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the Order.

38. Subject to the limitations of Paragraph 37, above, Respondent reserves the right to contest liability in any subsequent action filed by the EPA to seek penalties for violation of this Order, and reserves the right to contest liability in any subsequent action filed by the EPA for any violations alleged in the Findings, above.

39. With respect to matters not addressed in this Order, the EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and/or other legal remedies allowed by law.

Access and Requests for Information

40. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and/or any other authority.

Severability

41. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

42. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Modification

43. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

44. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Signatories

45. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this 3rd day of December, 2015.

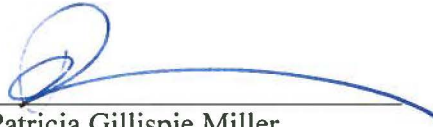


Karen A. Flournoy

Director

Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency – Region 7



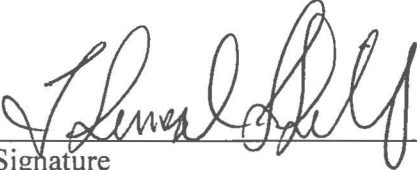
Patricia Gillispie Miller

Senior Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Crystal City, Missouri:



Signature

11-16-15

Date

THOMAS V SELLY

Name

MAYOR

Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Thomas V. Schilly
Mayor, City of Crystal City
130 Mississippi Avenue
Crystal City, Missouri 63019,

and by first class mail to:

Paul Dickerson, or his successor
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176.

12-3-15
Date

