

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Docket No. CWA-07-2010-0040

The City of Joplin, Missouri)
Respondent)

FINDINGS OF VIOLATION AND
ORDER FOR COMPLIANCE

Proceedings under Section 309(a)(3) and)
308 of the Clean Water Act, 33 U.S.C.)
§ § 1319(a)(3), 1318)

I. STATUTORY AUTHORITY

The following FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3) and Section 308, 33 U.S.C. § 1318, which authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division.

II. FINDINGS OF FACT

1. The City of Joplin, Missouri ("Respondent" or "Joplin"), is a political subdivision of the State of Missouri and a "municipality" within the meaning of 33 U.S.C. § 1362(4).
2. Joplin owns and operates a publicly owned treatment works ("POTW"), as that term is defined at 40 C.F.R. §§ 122.2 and 403.3. Joplin is a person, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. At all relevant times, Respondent has "discharged pollutants" from its POTW within the meaning of Sections 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6) and (12), from "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to waters of the United States, including Shoal Creek, Shoal Creek 3, Turkey Creek, and their associated tributaries, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). 1362.

4. 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 a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

5. During all times relevant to this Order, the "Industrial Users," as that term is defined by 33 U.S.C. § 1362(18), of the Joplin POTW described in Paragraph 2, discharged non-domestic pollutants into the Joplin POTW.

6. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and MDNR dated October 30, 1974. MDNR is also the state agency with the authority to administer the Pretreatment Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations at 40 C.F.R. § 403.10, and a Memorandum of Understanding between EPA and MDNR dated June 3, 1981. As such, MDNR is the Approval Authority for the Pretreatment Program in Missouri. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

7. Joplin's Pretreatment Program was approved by MDNR on or about September 28, 1983, thus Joplin is the "Control Authority" as defined in 40 C.F.R. Part 403.12(a). Joplin's approved Pretreatment Program sets forth procedures for implementing requirements for regulating industrial discharges to Respondent's POTW, and specifically incorporates requirements set forth at 40 C.F.R. § 403.8.

8. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 and the Missouri Clean Water Law, Chapter 644 of the Missouri Revised Statutes, and the implementing regulations at 10 CSR 20-1.010 *et seq.*, MDNR issued the City a NPDES permit for the Shoal Creek Wastewater Treatment Facility ("WWTF"), Permit Number MO-0023256, effective March 10, 2006, and expiring on March 9, 2011, and a NPDES permit for the Turkey Creek WWTF, Permit Number MO-0103349, effective January 26, 2007, revised March 9, 2007, and expiring on January 25, 2012.

9. The Respondent's NPDES permits MO-0023256 and MO-0103349 include Paragraph C.8 and Paragraph C.11, respectively, within the Special Conditions, that state that the "Permittee shall implement and enforce its approved pretreatment program in accordance with the requirements of 40 C.F.R. Part 403. The approved pretreatment program is hereby incorporated by reference."

10. As the approved pretreatment Control Authority, described in Paragraph 7 of this Order, Joplin issued pretreatment permits to the following Significant Industrial Users ("SIUs"),

defined in 40 C.F.R. § 403.3(t), that discharged pollutants to Joplin's POTW in 2007 and 2008:

- a. Able Body Corporation;
- b. Autotronics, Inc.;
- c. Cliffstar Corporation;
- d. EaglePicher Corporation (Range Line);
- e. Mid-American Precision Products, LLC (Plant #1);
- f. EaglePicher Corporation (Couples);
- g. Mid-American Precision Products, LLC (Plant #2);
- h. Certain Teed Corporation;
- i. FAG Bearings Corporation;
- j. Freeman Hospital, West Campus;
- k. Freeman Hospital, East Campus;
- l. Gilster-Mary Lee Corporation;
- m. RockTenn Company;
- n. Clean the Uniform Company;
- o. Hampshire Pet Products, LLC;
- p. Jasper Products Corporation;
- q. LaBarge Inc.;
- r. Lozier Corporation;
- s. Modine Manufacturing Company;
- t. Mid Western Machinery Company;
- u. Petro;
- v. General Mills;
- w. Protein Solutions LLC;
- x. Safeway Bakery (Glencourt);
- y. St. Johns Regional Medical Center;
- z. Star-Brite Plating of Joplin, Inc.;
- aa. Tamko (High Street); and
- bb. Tamko (Range Line).

11. On March 31 through April 1, 2009, EPA performed an on-site evaluation of the Respondent's pretreatment program, specifically Joplin's implementation of its approved pretreatment program. EPA provided the report documenting the findings of the evaluation to MDNR and Joplin on or about July 1, 2009.

12. The evaluation described in Paragraphs 11, above, identified violations of Joplin's NPDES permit, including the failure to implement its approved pretreatment program and the Pretreatment Regulations, 40 C.F.R. Part 403. Failure to implement its approved pretreatment program in compliance with its NPDES Permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Respondent has failed to implement its approved pretreatment program specifically as outlined in Paragraphs 13 through 15, below.

III. VIOLATIONS

13. As described below in Paragraphs 14 and 15, EPA's inspection and review of available information document that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. 1311(a), by violating Paragraphs C.8 and/or Paragraph C.11 of its NPDES permits, as described in Paragraph 9 of this Order. Joplin's NPDES permits required Joplin to "implement and enforce its approved pretreatment program in accordance with the requirements of 40 C.F.R. Part 403."

Failure to Conduct Annual Inspection of the SIUs

14. 40 C.F.R. § 403(f)(2)(v) requires that Respondent inspect each SIU at least once a year.

15. In violation of 40 C.F.R. § 403(f)(2)(v), Respondent failed to conduct annual inspections of the SIUs identified in Paragraph 10 of this Order for two (2) of the SIUs in 2007 and for twenty-one (21) of the SIUs in 2008. The failure to conduct the inspections was acknowledged in the evaluation described in Paragraph 11. The following table identifies each facility that Respondent failed to inspect for the respective year.

Table 1

Date(s) of Violation	Significant Industrial User	Last Inspection
2007 and 2008	Modine Manufacturing Company	November 2006
2007 and 2008	Hampshire Pet Products, LLC	December 2006
2008	Able Body Corporation	December 2007
2008	Autotronics, Inc.	April 2007
2008	Cliffstar Corporation	December 2007
2008	EaglePicher (Range Line)	July 2007
2008	EaglePicher (Couples)	July 2007
2008	Mid-American Precision Products (Plant #1)	January 2007
2008	Mid-American Precision Products (Plant #2)	January 2007
2008	Freeman Hospital East Campus	June 2007
2008	Freeman Hospital West Campus	June 2007
2008	Gilster-Mary Lee Corporation	October 2007
2008	RockTenn Company	October 2007
2008	Clean the Uniform Company	April 2007
2008	Jasper Products Corporation	June 2007
2008	LaBarge Inc.	January 2007
2008	Petro	December 2007
2008	Safeway Bakery (Glencourt)	June 2007
2008	St. Johns Regional Medical Center	June 2007
2008	Tamko (High Street)	June 2007
2008	Tamko (Range Line)	November 2007

IV. ORDER FOR COMPLIANCE

Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

16. Immediately upon the Effective Date of this Order, Respondent shall take whatever actions are necessary to correct the deficiencies and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permits.

17. By no later than December 15, 2009, Respondent shall submit information to EPA, with a copy to MDNR, as follows:

- a. An explanation of actions taken and/or plans for action to be taken to correct the violations cited herein; and
- b. An explanation of processes and procedures developed, revised and implemented to prevent future violations and ensure compliance with the NPDES permits requirements.
- c. A complete list of the annual inspections conducted in 2009 to date for each of the SIUs, as required by 40 C.F.R. § 403(f)(2)(v).

18. By no later than January 4, 2010, Respondent shall submit to EPA, with a copy to MDNR, a complete list of the annual inspections completed by December 31, 2009, for each of the SIUs, as required by 40 C.F.R. § 403(f)(2)(v).

19. Respondent shall send all responses required by this Order to be submitted to EPA to:

Robert Bryant
Environmental Scientist
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

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

Kevin Mohammadi
Enforcement Section Chief, Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

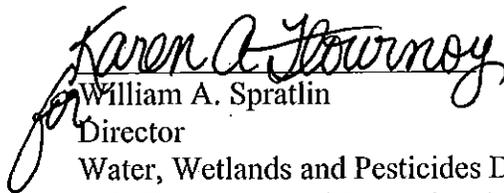
and

Cindy Davies
Director, Southwest Regional Office
Missouri Department of Natural Resources
2040 West Woodland
Springfield, Missouri 65807-5912.

21. 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. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d), or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

22. This Order shall become effective upon the date of receipt by Respondent.

Issued this 10th day of December 2009.



William A. Spratlin

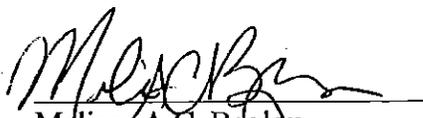
Director

Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency, Region 7

901 North 5th Street

Kansas City, Kansas 66101



Melissa A.C. Bagley

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 7

901 North 5th Street

Kansas City, Kansas 66101.

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of the Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

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

Mayor Gary Shaw
City of Joplin, Missouri
602 South Main Street
Joplin, Missouri 64801

Kevin Mohammadi
Enforcement Section Chief, Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

Cindy Davies
Director, Southwest Regional Office
Missouri Department of Natural Resources
2040 West Woodland
Springfield, Missouri 65807-5912.

Date

Signature