

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
City of Mountain Grove, Missouri )  
)  
A Municipality )  
)  
Proceedings under Section 309(a) (3))  
of the Clean Water Act, )  
33 U.S.C. 1319(a) (3) )  
\_\_\_\_\_ )

FINDINGS OF VIOLATION AND  
ORDER FOR COMPLIANCE

Docket No. CWA-07-2009-0080

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and the 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), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent, the City of Mountain Grove, Missouri (hereafter "Respondent" or "Mountain Grove"), operates a Publicly Owned Treatment Works ("POTW") in the State of Missouri that treats domestic, commercial, and industrial wastewater.

3. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System ("NPDES") program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

**II. Jurisdiction and Finding of Fact**

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 NPDES permit issued pursuant to that Section.

5. Mountain Grove is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. Mountain Grove owns and operates a POTW (hereafter "the POTW") that receives and treats wastewater from various domestic, commercial, and industrial sources.

7. Mountain Grove's POTW discharges to an unnamed tributary to East Whetstone Creek.
8. The POTW is a "point source" that "discharges pollutants" into "navigable waters" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.
9. The Respondent's discharge of pollutants from the POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
10. On September 10, 2004, MDNR granted NPDES permit No. MO-0028711 (hereafter "NPDES permit"), to the Respondent for discharges from the Mountain Grove East Wastewater Treatment Plant ("East WWTP") to an unnamed tributary to East Whetstone Creek, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of September 9, 2009.
11. Part A. Effluent Limitations and Monitoring Requirements of the Respondent's NPDES permit sets seasonal monthly average and daily maximum final effluent limitations for Ammonia as N at Outfall #001 that became effective on July 18, 2005, and requires monitoring for this parameter at least once per month. The monthly average limitation for Ammonia as N for May 1 through October 31 is 1.5 milligrams per liter ("mg/L") and for November 1 through April 30 is 4.5 mg/L. The daily maximum limitation for Ammonia as N for May 1 through October 31 is 2.1 mg/L and for November 1 through April 30 is 6.0 mg/L.
12. Part A. Effluent Limitations and Monitoring Requirements of the Respondent's NPDES permit sets seasonal monthly average and daily maximum final effluent limitations for Carbonaceous Biochemical Oxygen Demand<sub>5</sub> ("CBOD<sub>5</sub>") at Outfall #001 that became effective on July 18, 2005, and requires monitoring for this parameter at least once per month. The monthly average limitation for CBOD<sub>5</sub> for May 1 through October 31 is 11 mg/L and for November 1 through April 30 is 27 mg/L. The daily maximum limitation for CBOD<sub>5</sub> for May 1 through October 31 is 15 mg/L and for November 1 through April 30 is 37 mg/L.
13. Part A. Effluent Limitations and Monitoring Requirements of the Respondent's NPDES permit sets seasonal monthly average and daily maximum final effluent limitations for Dissolved Oxygen at Outfall #001 that became effective on July 18, 2005, and requires monitoring for this parameter at least once per month. The monthly average limitation for Dissolved Oxygen for May 1 through October 31 is 8 mg/L and for November 1 through April 30 is 8 mg/L. The daily maximum limitation for Dissolved Oxygen for May 1 through October 31 is 5 mg/L and for November 1 through April 30 is 5 mg/L.
14. Part A. Effluent Limitations and Monitoring Requirements of the Respondent's NPDES permit requires that monitoring reports shall be submitted monthly and the reports shall be submitted by the 28<sup>th</sup> day of the month following the reporting period.
15. On February 17 through February 19, 2009, EPA performed an inspection of Mountain Grove's East WWTP under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "Inspection").

16. During the Inspection, the EPA inspector conducted a walk through of Mountain Groves's East WWTP with a detailed discussion regarding its operation condition, inspection of the outfalls at the receiving stream, and a review of the sampling and laboratory procedures, operating procedures and recordkeeping practices. The EPA inspector documented his findings regarding Mountain Grove's compliance with its NPDES permit and the CWA, as follows:

- (a) Based on a review of Mountain Grove's discharge monitoring reports ("DMRs"), Mountain Grove's East WWTP exceeded the NPDES permit limitations for Ammonia as N at Outfall #001 as follows:

January, February, and April through December 2007 – Ammonia as N mg/L daily maximum and monthly average

March 2007 – Ammonia as N mg/L monthly average

January, February, and May through December 2008 – Ammonia as N mg/L daily maximum and monthly average

January 2009 – Ammonia as N mg/L daily maximum and monthly average

- (b) Based on a review of Mountain Grove's DMR's, Mountain Grove's East WWTP exceeded the NPDES permit limitations for Dissolved Oxygen at Outfall #001 as follows:

June and July 2007 – Dissolved Oxygen mg/L daily maximum

- (c) Based on a review of Mountain Grove's DMR's, Mountain Grove's East WWTP exceeded the NPDES permit limitations for CBOD<sub>5</sub> at Outfall #001 as follows:

May 2008 – CBOD<sub>5</sub> mg/L daily maximum and monthly average

- (d) Based on the analysis of samples collected by the EPA inspector, the Respondent's POTW exceeded the monthly average at Outfall #001 for Ammonia as N.

### **III. Findings of Violation**

17. Respondent violated its NPDES permit by failing to comply with the effluent limitations for Ammonia as N, Dissolved Oxygen, and CBOD<sub>5</sub> during the time periods identified in Paragraph 16, subparagraphs (a), (b), (c), and (d) above.

18. Respondent's violations of the requirements of its NPDES Permit, as identified in Paragraph 16 above, constitute violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

#### IV. Order for Compliance

19. 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), Respondent is hereby ORDERED to take the actions described below.

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

21. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide EPA a proposed Compliance Plan, for EPA's review and approval, which shall describe in detail how Respondent intends to eliminate future violations of its NPDES permit. At a minimum, the proposed Compliance Plan shall include:

- a. A description of actions Respondent proposes to undertake at the POTW to eliminate effluent violations; and
- b. A schedule for implementation of the proposed modification(s) as early as possible, but in no event later than October 31, 2009.

22. EPA will review the proposed Compliance Plan, as described in Paragraph 21 above, and notify Respondent in writing of EPA's approval, disapproval, or modification of the submittal, or any part thereof. Upon receipt of EPA's approval or notice of modification(s), Respondent shall commence work and implement any approved submittal in accordance with the schedule and provisions contained therein. EPA approved submittals shall be deemed incorporated into and enforceable as part of this Order.

23. For one year from the effective date of this Order, Respondent shall submit to EPA on a quarterly basis, monthly DMRs. The reports shall be submitted no later than the 28<sup>th</sup> day of the month following the end of the calendar quarter (e.g., January 28, April 28, July 28, and October 28).

24. With each submittal to EPA pursuant to the requirements of this Order the Respondent shall include a written statement signed by a principal executive officer or ranking elected official, or by a duly authorized representative of that person, that contain the following certification:

I 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 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.

### **Submissions**

25. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Kimberly Willis  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

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

Kevin Mohammadi  
Section Chief  
Water Pollution Compliance and Enforcement Section  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102, and

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

### **V. General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

27. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to correct the violations described above, including but not limited to actions to protect the health or welfare of persons or the environment, or 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.

28. This Order does not constitute a waiver or a modification of any requirements of the CWA, 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 Section 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.

#### **Access and Requests for Information**

29. Nothing in this Order shall limit 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**

30. 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**

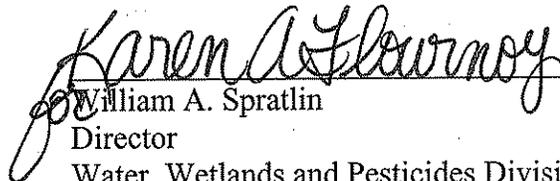
31. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Order.

#### **Termination**

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

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 23<sup>rd</sup> day of June, 2009.

  
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William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

  
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Melissa A.C. Bagley  
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this 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 Delbert Crewse  
City of Mountain Grove, Missouri  
P.O. Box 351  
Mountain Grove, Missouri 65711

Kevin Mohammadi  
Section Chief  
Water Pollution Compliance and Enforcement Section  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

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

6/23/09  
Date

Ray Gonzalez