

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region 7, is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. The City of Joplin, Missouri (hereafter "Respondent" or "City"), is a political subdivision of the State of Missouri and a "municipality" within the meaning of 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater.

Statutory and Regulatory Framework of Section 301 of the CWA

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. §§ 1342.

6. The Respondent, the City, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

7. Section 402 of the CWA, 33 U.S.C. § 1342, 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.

8. 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. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

9. At all relevant times, Respondent has owned and operated two wastewater treatment facilities ("WWTFs") and their associated sewer and stormwater collection and transmission systems (collectively referred to as "publicly owned treatment works" or "POTW"), which

receive and treat wastewater and stormwater runoff from residential, commercial, and industrial connections within the City and several unincorporated areas located in Jasper and Newton Counties, Missouri. "POTW" is defined at 40 C.F.R. § 122.2.

10. Respondent's POTW includes approximately 370 miles of sewer line and 15 lift stations and services a population of approximately 55,000, which includes 17,000 residential connections, 1,800 commercial connections, and 200 industrial connections to sanitary sewer lines.

11. 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 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.

12. 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).

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

14. At all relevant times, Respondent's NPDES permits for the WWTFs have authorized Respondent to discharge pollutants only from specified point sources, identified in the permits as

one or more numbered "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permits.

Factual Background

15. On December 3 and 4, 2007, an EPA representative performed an inspection of the Respondent's facilities under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspection included (1) completion of the Sanitary Sewer Overflow ("SSO") Inspection checklist; (2) a facility walk through, including 3 lift stations; and (3) a review of self-monitoring records and complaint logs.

16. On June 29, 2007, Respondent experienced a discharge of untreated wastewater from a location within the Respondent's wastewater collection system, (hereinafter referred to as a "sanitary sewer overflow" or "SSO"). The location of this discharge was not identified as a numbered outfall in Respondent's NPDES permits.

17. Specifically, the June 29, 2007, SSO was a discharge of untreated wastewater from a manhole, a point source, into Shoal Creek directly upstream of a local swimming beach.

18. The discharge of pollutants as identified in Paragraphs 16 and 17 above is a violation of the terms and conditions of the NPDES permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the City, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Findings of Violation Of Section 301 Of The CWA

Unpermitted Discharges from Sanitary Sewer System

19. Paragraphs 1-18 are realleged and incorporated herein by reference.

20. On June 29, 2007, Respondent discharged pollutants from a point source within its separate sanitary sewer collection and transmission system, which was not identified in its

NPDES permits as an authorized outfall. This SSO is not permitted or otherwise authorized by the CWA.

21. The discharge referred to in Paragraph 20 constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

CONSENT AGREEMENT

22. Respondent admits the jurisdictional allegations of this Complaint and CA/FO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

23. Respondent neither admits nor denies the factual allegations contained in this Complaint and CA/FO.

24. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

25. Respondent and Complainant each agree to bear their own costs and attorney's fees.

26. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

27. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), identified in Attachment 1, which is enclosed to and incorporated into this CA/FO. The parties agree that performance of the SEP, set forth in Attachment 1, is intended to secure significant environmental restoration and/or protection.

28. Respondent agrees that it will not deduct the cost of the SEP, as set forth in Attachment 1, from its taxes.

29. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty in the amount of Three Thousand and Three Hundred and Ninety-four Dollars (\$3394) to be paid within thirty (30) days of the effective date of the Final Order.

30. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 29 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

31. The undersigned representative(s) of Respondent certifies that he is fully authorized to enter the terms and conditions of this Complaint and CA/FO and to execute and legally bind Respondent to it.

32. Payment of the entire penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violation.

33. Respondent certifies by the signing of this CA/FO that the Respondent is operating in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and the Respondent's NPDES permit. The effect of the settlement described in paragraph 32 above is conditional upon the accuracy of this certification.

34. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This CA/FO may be executed by EPA upon receipt from Respondent of a signature page. Upon its execution, a copy of the executed agreement shall be sent by U.S. mail to Respondent.

35. Respondent agrees that the original CA/FO signed by Respondent shall be transmitted to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 901 North Fifth St., Kansas City, Kansas 66101. Upon the EPA's receipt of the signed original from Respondent, it shall be filed with the Regional Hearing Clerk.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309 (g) of the Clean Water Act (CWA), 33 U.S.C. § 1319 (g), it is ORDERED that:

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall submit a Work Plan to EPA that describes the implementation of the SEP identified in Attachment 1. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the start and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA's comments within fifteen (15) days after receipt of EPA's written comments. The Work Plan shall become a Final Work Plan upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than April 1, 2012.

2. Respondent shall notify EPA in writing within one week after the completion of the SEP. Within forty-five (45) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

- a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.

- b. A signed and notarized certification that it has not deducted the SEP cost from its taxes.
- c. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
- d. An itemized accounting of the costs incurred per project in performance of the SEP. The itemization shall be submitted with the following statement, signed by Respondent:

I certify that the information accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the United States, its agencies and departments, including the possibility of fine and imprisonment for knowing violations.

3. Respondent shall pay stipulated penalties in the following circumstances:

- a. For failure to submit the Work Plan, as required by Paragraph 1 above, or failure to submit it to EPA within the time frame set forth in Paragraph 1 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the due date set forth in Paragraph 1, until the report is submitted in a form that satisfies EPA.
- b. For failure to submit the SEP Completion Report, as required by Paragraph 2 above, or failure to submit it to EPA within the time frame set forth in Paragraph 2 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the due date set forth in Paragraph 2, until the report is submitted in a form that satisfies EPA.

- c. Except as provided in subparagraphs (d) and (e) below, for a SEP, which has not been completed satisfactorily as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount that equals the estimated cost of the SEP as set forth in Attachment 1, along with interest accrued at the statutory rate.
- d. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.
- e. If the SEP is satisfactorily completed, but the Respondent spent less than 90% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Attachment 1 and the amount expended in implementing the SEP.
- f. If no SEP is implemented and the penalty of Three Thousand Three Hundred and Ninety-four Dollars (\$3394) is not made within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Two Thousand Five Hundred Dollars (\$2,500) in addition to the that which is due, along with interest accrued at the statutory rate.

4. Payment of stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with

the provisions of this Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region 7
PO Box 371099M
Pittsburgh, PA 15251.

The check shall note the case title and the docket number. A copy of the check shall be sent to Melissa A.C. Bagley, Assistant Regional Counsel, EPA-Region 7, 901 North Fifth Street, Kansas City, Kansas 66101.

5. Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other enforcement action or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

6. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to property not owned by Respondent that is the location of a SEP at all reasonable times to monitor Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

7. Respondent shall pay a civil penalty of Three Thousand and Three Hundred and Ninety-four Dollars (\$3394). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

EPA-Region 7
PO Box 371099M
Pittsburgh, PA 15251.

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Melissa A.C. Bagley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Parties Bound

8. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

Reservation of Rights

9. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

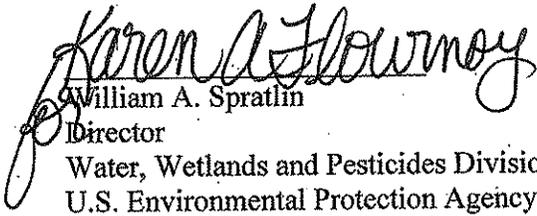
10. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Effective Date

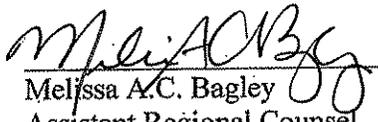
11. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from the effective date unless otherwise provided in this Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY


William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7

9-28-09
Date


Melissa A.C. Bagley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

9-28-09
Date

FOR RESPONDENT:
CITY OF JOPLIN, MISSOURI:

David Hertzberg
Name David K. Hertzberg

8/13/09
Date

Director of Public Works
Title

IT IS SO ORDERED.

Sept. 28, 2009
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

ATTACHMENT 1

SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Background

The City of Joplin owns and operates the Shoal Creek Wastewater Treatment Plant ("WWTP"), which discharges to Shoal Creek.

Supplemental Environmental Project

The City of Joplin shall install duplex submersible turbine pumps with pressure relief valves and the necessary pressure piping. The proposed project shall be utilized to pump the Shoal Creek WWTP effluent to multiple yard hydrants in order to clean the clarifier basins, weirs, flow structures, and various other components within the Shoal Creek WWTP.

Completion of this project does not relieve the Respondent of its obligations to comply with its NPDES permits, specifically its effluent limitations, and/or the Clean Water Act.

Supplemental Environmental Project Location

The location of this project shall be at the Shoal Creek Wastewater Treatment Plant located at 2860 Apricot Drive in Joplin, Missouri.

Total Supplemental Environmental Project Cost

The total supplemental environmental project shall cost at least \$65,000.

Schedule for Implementation of the Supplemental Environmental Project

The City of Joplin anticipates that October 1, 2010, will be the start date for implementation of the Supplemental Environmental Project. The City of Joplin shall complete installation of the Supplemental Environmental Project described above by no later than April 1, 2012. The City of Joplin shall submit a certificate of operation by April 1, 2013, to demonstrate a full year of operation of the pumping and piping system.

IN THE MATTER OF City of Joplin, Missouri, Respondent
Docket No. CWA-07-2009-0101

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Complaint and Consent Agreement/
Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Melissa A.C. Bagley
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David K. Hertzberg
Director of Public Works
City of Joplin, Missouri
602 South Main Street
Joplin, Missouri 64801

Dated: 9/29/09



Kathy Robinson
Hearing Clerk, Region 7