

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF) FINDINGS OF VIOLATION AND ORDER
PORTAGE DES SIOUX, MO) FOR COMPLIANCE
)
A Municipality)
) Docket No. CWA-07-2010-0091
Proceeding under Section 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 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" or the "Act"), 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. The City of Portage des Sioux, Missouri (hereafter "Respondent" or "City") owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

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

II. Jurisdiction and Findings 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, permits issued under the authority of 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. The City is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.

7. The City's POTW discharges to the Mississippi River.

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

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

10. On July 27, 2001, MDNR issued to the City NPDES Permit No. MO107328 (hereafter "2001 NPDES permit") for discharges from its POTW to Mississippi River. The NPDES permit expired on July 26, 2006. The City submitted a permit application for renewal of its 2001 NPDES permit on August 7, 2006.

11. The 2001 NPDES permit states that the City's wastewater treatment plant ("WWTP"), which discharges through Outfall 001, has a design capacity of 30,000 gallons per day ("gpd") and an average flow of 49,000 gpd. The permit also states that the design flow for the settling basin discharging through Outfall 002 is 201,000 gpd.

12. Section A, Effluent Limitations and Monitoring Requirements, of the City's 2001 NPDES permit established monitoring requirements and permit limitations for Outfall 001, discharge from the WWTP, including the following:

a. total suspended solids ("TSS") – monitoring at least once per month with weekly average limitations of 45 milligrams per Liter (mg/L), monthly average limitations of 30 mg/L, and compliance with a removal efficiency of 85%;

b. biochemical oxygen demand ("BOD₅") – monitoring at least once per month with weekly average limitations of 45 mg/L, monthly average limitations of 30 mg/L, and compliance with a removal efficiency of 85%;

c. fecal coliform – monitoring at least once a month with seasonal (April 1 through October 31) daily maximum limits of 1,000 count per 100 milliliters (1000/100 mL) and monthly average limit of 400/100 mL;

d. total residual chlorine ("TRC") – monitoring at least once per month with seasonal (April 1 through October 31) daily maximum and monthly average limits of 0.01 mg/l; and

e. flow monitoring at least once per week.

13. Section A of the City's 2001 NPDES permit also requires Respondent to file Discharge Monitoring Reports ("DMRs") with the MDNR on a quarterly basis that

summarize Respondent's sampling and analysis results for all pollutants regulated by the NPDES permit, and prohibits the discharge of floating solids or visible foam other than in trace amounts.

14. Section B of the City's 2001 NPDES permit, Standard Conditions, includes the following requirements within Part I – General Conditions:

a. Section B2 requires the permittee to provide notice to MDNR regarding noncompliance with the permit. Subsection B.2.a requires written notice to MDNR within five days of becoming aware of noncompliance with any daily maximum effluent limitation; and Subsection B.2.b requires verbal reporting within twenty-four hours, followed by a written report within five days, of any noncompliance that may endanger health or the environment; and

b. Section B.3 requires the permittee to operate and maintain facilities to comply with the Missouri Clean Water Law and the applicable permit conditions.

15. On March 19-22, 2007, an EPA representative performed an inspection (hereafter "EPA Inspection") of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the inspection was observation of the City's POTW.

16. During the time of the EPA Inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the NPDES permit, observed the WWTP and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations included, but were not limited to:

a. black sludge deposits in the receiving stream below Outfall 001;

b. identification by the City of areas of significant inflow and infiltration ("I&I"), particularly in low lying areas and in areas where homes had been razed, but sewer lines had not been capped or disconnected;

c. numerous instances, particularly during wet weather events, when the influent flow to the WWTP greatly exceeded the treatment capacity of the plant;

d. numerous instances when no samples had been taken and analyzed during periods of high flow through Outfall 001, thus potentially understating the loadings of pollutants to the receiving stream during these events; and

e. numerous instances of noncompliance with effluent limitations contained in the 2001 NPDES permit, including noncompliance identified through analysis of samples collected during the EPA Inspection.

17. On March 26, 2010, MDNR reissued the City's NPDES Permit No. MO107328 (hereafter "2010 NPDES permit") for discharges from its POTW to Mississippi River. The 2010 NPDES permit expires on March 25, 2015.

18. The 2010 NPDES permit states that the City's WWTP, which discharges through Outfall 001, has a design capacity of 30,000 gallons per day ("gpd") and an average flow of 15,000 gpd.

19. Section A, Effluent Limitations and Monitoring Requirements, of the City's 2010 NPDES permit established interim monitoring requirements and permit limitations for Outfall 001 prior to completion of plant upgrades and final monitoring requirements and final permit limitations effective on July 1, 2013, pursuant to a schedule for compliance for upgrades to the WWTP in Section E of the permit. The following provisions in the 2001 NPDES permit have been revised in the 2010 NPDES permit:

a. total residual chlorine ("TCR") for Outfall 001 – interim limits require monitoring at least once per month with daily maximum and monthly average limits of 0.01 mg/l; final limits require monitoring at least once per month with daily maximum limits of 0.017 mg/L and monthly average limits of 0.008 mg/L; and

b. ammonia as N for Outfall 001 – interim monitoring and reporting (mg/L) at least once per month; final limits require monitoring at least once per month with daily maximum limits of 3.7 mg/L in the months of May 1-October 31 and 7.5 mg/L in the months November 1-April 30; monthly average limits for ammonia as N in the months May 1-October 31 are 1.4 mg/L and in the months November 1-April 30 are 2.8 mg/L.

20. Pursuant to the Facility Description of the 2010 NPDES permit, discharges from Outfall 002 are prohibited and are subject to the bypass provisions of 40 C.F.R. §122.41(m).

III. Findings of Violation

21. The facts stated in aforementioned Paragraphs 4 through 20 are herein incorporated.

22. Within the past five years, the City has exceeded its weekly average and monthly average 2001 NPDES permit limitations for TSS, BODs, fecal coliform, and TRC, including the following:

a. the City exceeded the weekly average NPDES permit limitations for TSS during the months of November 2005, and the monthly average limitation during the months of November 2005 and January 2006;

b. the City exceeded the monthly average NPDES permit limitations for BODs during the month of November 2005;

c. the City exceeded the daily maximum and the monthly average NPDES permit limitations for fecal coliform during the month of August 2005;

d. the City exceeded the weekly and monthly NPDES permit limitations for TRC during the month of August 2005;

23. Following the expiration of the NPDES permit in July 2006, the City discharged wastewater that exceeded the limitations contained in the 2001 NPDES permit, including the weekly and monthly average limitations for TSS during the month of September 2007, and the weekly and monthly average limitations for TRC on numerous occasions between August 2006 and April 2009;

24. Each discharge of pollutants as identified in Paragraph 22 above is a violation of the terms and conditions of the NPDES permit 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).

25. All discharges following expiration of the City's NPDES permit on July 26, 2006, including the discharges identified in Paragraph 23, have been discharges in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

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

26. *Immediate Collection System Repairs:* Beginning immediately upon receipt of this Order, the City shall identify and permanently cap, remove or otherwise disable all open and abandoned connections within the sewer collections system which serve, or may serve, as a conduit to allow extraneous flow into the City's sewer collection system.

a. Within sixty (60) days of receipt of this Order, the City shall complete actions necessary to permanently eliminate sources of extraneous flow into the City's sewer collection system, as described above; and.

b. Within ninety (90) days of receipt of this Order, the City shall submit to EPA a report that includes:

- i) a list (including location information) of all identified sources of extraneous flow to the City's collection system;
- ii) a list of all actions taken to permanently eliminate flow from each identified source, including information regarding the location of each source eliminated and the action(s) taken, including digital, date-stamped photos of the work completed;

- iii) a statement indicating the continuing actions the City will take to continue to eliminate all currently identified sources, if not yet complete; and
- iv) a description of the actions the City will take to identify and eliminate any additional sources of extraneous flow.

27. Immediate WWTP Repairs, Operation and Maintenance: The City shall, immediately upon receipt of this Order, identify and thereafter implement all necessary actions to comply with the conditions and limitations contained within its NPDES permit and necessary to ensure optimal operation of its WWTP. Within ninety (90) days of receipt of this Order, the City shall submit to EPA:

- a. a statement of all repairs or upgrades to the correct WWTP and supporting documents of said repairs or upgrades that have occurred after January 1, 2007. Supporting documentation would include invoices, vendor information, completed work orders, and where possible, digital, date-stamped photos showing the completed work;
- b. a copy of the current schedule of routine operations and maintenance and any standard operating procedures utilized by the City at its WWTP, including any special procedures and practices utilized by the City at its WWTP to address events such as high flows and plant upset;
- c. a statement identifying, and a plan to implement, any additional immediate repairs needed to bring the current wastewater treatment into optimal working condition; and
- d. a statement of the current use of the settling basin for retention, to the extent feasible, of flows to the WWTP exceeding the plant's capacity during high flow periods.

28. Plan of Action – WWTP and Collection System:

- a. By no later than March 25, 2011, the City shall submit to MDNR and EPA, for review and approval, a detailed Plan of Action ("POA") containing a schedule with phased and fixed-date action items for achieving compliance with all applicable final effluent limitations at the WWTP and for eliminating to the extent feasible, I&I to the collection system. The schedule included in the POA shall ensure that all work performed pursuant to this Section shall be completed as soon as practicable, but no later March 25, 2013. Final effluent limits become effective on July 1, 2013. Upon approval, the City shall implement the provisions of the POA as a condition of compliance with the Order.
- b. The POA shall, at a minimum, identify activities and provide a project-specific schedule to address, at a minimum, the following elements of the City's wastewater collection and treatment program:

- i. a program for routine and systematic inspection, maintenance and repair of the collection system;
- ii. a program to identify and eliminate, to the extent feasible, all sources of I&I to the collection system;
- iii. a process to identify all causes of effluent limitation noncompliance and/or bypass events at the WWTP (e.g., I/I, lack of adequate capacity at the plant, treatment process deficiencies, lack of back-up equipment, lack of monitoring and alarm systems); and
- iv. a detailed plan and schedule for correction of the deficiencies, installation of equipment and/or construction of new facilities to ensure all discharges from the WWTP comply with the secondary treatment and water quality-based limitations in the City's applicable NPDES permit.

c. The City shall at all times comply with requirements established by the State of Missouri and MDNR regarding repair, construction, and operation of facilities associated with the City's POTW, including but not limited to, any requirements for work to be performed by certified or professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable state requirements.

29. *Reporting to MDNR:* The City shall immediately begin reporting noncompliance occurrences to the MDNR within 24-hours orally and within five days in writing of all overflows, bypasses, and other noncompliance permit noncompliance as set specified in Section B of the City's NPDES permit, Standard Conditions, Part I – General Conditions, Section B.2, as if such permit were still in effect, or in such similar provision in a new NPDES permit issued by NDEQ to the City.

30. *Reporting to EPA and MDNR:* The City shall submit the following quarterly reports and information to EPA, with a copy to MDNR, every January 28, April 28, July 28, and October 28 until termination of this Order pursuant to Paragraph 41 below. The first report is due July 28, 2010. The City shall submit to EPA, with a copy to MDNR, a report describing the actions the City has taken, to date, to comply with the terms of this Order. The City's report shall include, at a minimum:

- i) Collection system repairs. The initial report shall include information regarding collection system repairs required by Paragraph 26.b above, and subsequent reports shall provide an update regarding the activities required by Paragraph 26;
- ii) WWTP repairs or upgrades. The initial report shall include information regarding all WWTP repairs, operation and maintenance activities required by Paragraph 27 above, including a copy of the revised or new operation and maintenance manual, and subsequent reports shall provide an update regarding the activities required by Paragraph 27;

- iii) POA updates. Each quarterly report shall provide a detailed update regarding the City's implementation of the POA requirements under Paragraph 28;
- iv) Noncompliance notices. All reports shall include a summary of all noncompliance notices submitted to MDNR pursuant to Paragraph 29; and
- v) Monthly Discharge Monitoring Reports. Each quarterly report shall include a copy of that quarter's Discharge Monitoring Reports, the original to have been sent to MDNR on a monthly basis, as required in the NPDES permit.

Approval of the Plan of Action and Incorporation into the Order

31. Upon receipt, EPA will review the POA submitted by the City pursuant to Paragraph 28, and after consultation with MDNR, shall approve the POA or require modification and resubmission of portion or all of the POA pursuant to Paragraph 32, below. Upon approval, the POA submitted under Paragraph 28, above, or resubmitted pursuant to Paragraph 32, below, shall be deemed incorporated into and become enforceable under this Order, or at EPA's discretion, shall be incorporated into, and become enforceable under, a separate order issued under the authority of the CWA.

Modification and Resubmission of Plan of Action

32. If required by EPA pursuant to Paragraph 31, above, the City shall within forty-five (45) days of receipt of any written comments from EPA regarding the POA, make modifications and changes to such documents as directed by EPA, and resubmit the documents to EPA, with a copy to MDNR. Upon request, EPA may grant, in writing, a longer period of time for resubmission of such documents.

Certification

33. All submissions made by Respondent to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

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 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 submissions of false information.

Submissions

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

Kimberly Willis
Compliance Officer
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

35. All documents required to be submitted to MDNR by this Order shall be submitted by mail to:

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

and

Mike Struckhoff
Director
Saint Louis Regional Office
Missouri Department of Natural Resources
7545 South Lindbergh, Suite 210
St. Louis, Missouri 63125.

VI. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

36. 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 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.

37. 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 Act, 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 Act for any violation whatsoever.

Access and Requests for Information

38. 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

39. 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

40. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

41. 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 the requirements of this Order have been met.

Issued this 16th day of April, 2010.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Patricia Gillsipie Miller
Senior Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

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

The Honorable Mark Warner
Mayor
City of Portage des Sioux
165 South 4th Street
Ste. Genevieve, Missouri 63670;

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

and

Mike Struckhoff
Director
Saint Louis Regional Office
Missouri Department of Natural Resources
7545 South Lindbergh, Suite 210
St. Louis, Missouri 63125.

4/20/10

Date


