

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7 09 DEC 28 PM 4: 25

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101 ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
American Resorts Cottage Owners)
Association of Lake Stockton, Inc.)
)
) Docket No. CWA-07-2010-0036
Proceedings 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 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 American Resorts Cottage Owners Association of Lake Stockton, Inc. (hereafter "Respondent"), operates a wastewater treatment plant ("WWTP") located in Stockton, Missouri that collects and treats domestic 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. The Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. Respondent owns and operates a WWTP that receives and treats wastewater from domestic sources.

7. Respondent's WWTP discharges to an unnamed tributary to Stockton Lake.

8. The WWTP 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 WWTP requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. On August 16, 2006, MDNR granted NPDES permit No. MO-0093220 (hereafter "NPDES permit"), to the Respondent for discharges from the American Resorts Cottage Owners Association of Lake Stockton, Inc. Wastewater Treatment Plant to an unnamed tributary to Lake Stockton, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of August 15, 2011.

11. Section A of the Respondent's NPDES permit sets the following effluent limitations and monitoring requirements:

- a. Five-Day Biochemical Oxygen Demand ("BOD₅") weekly average of thirty milligrams per liter ("mg/L") and monthly average of twenty mg/L.
- b. Total Suspended Solids ("TSS") weekly average of thirty mg/L and monthly average of twenty mg/L.
- c. Fecal Coliform monthly average of four hundred counts per one hundred milliliters ("#/100 ml") and daily maximum of one thousand #/100 ml. Final limitations and monitoring requirements for Fecal Coliform are applicable only during the recreational season from April 1 through October 31. Monthly average limit for Fecal Coliform is expressed as a geometric mean.

12. Section C2 of the Respondent's NPDES permit requires the Respondent to clearly mark all outfalls in the field.

13. Section C6.b.1 of the Respondent's NPDES permit requires that all discharges to waters of the state to be free from substances in sufficient amount to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses.

14. Pursuant to 40 C.F.R. § 122.41(e), Respondent's NPDES permit contains the following Standard Condition at Part I.B.3: "Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions. Operators or supervisors of operations at publicly owned or publicly regulated wastewater treatment facilities shall be certified in accordance with 10 CSR 209.020(2) and any other applicable law or regulation." Part I.B.4 of Respondent's NPDES permit requires that "[t]he permittee shall take all necessary steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit or set forth in the Missouri Clean Water Law and Regulation . . ." (hereafter Part I.B.3&4 collectively referred to as "Proper Operation and Maintenance Condition").

15. Pursuant to 40 C.F.R. § 122.41(e), Respondent's NPDES permit contains the following Standard Condition at Part III.K.: "The permittee shall maintain records on file at the facility for at least five years for the items listed in these Standard Conditions and any additional items in the Special Conditions section of this permit. This shall include dates when the sludge facility is checked for proper operation, records of maintenance and repairs and other relevant information." (hereafter Part III.K collectively referred to as "Recordkeeping Requirements").

16. On August 12 through August 13, 2009, EPA performed an inspection of the Respondent's WWTP under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "Inspection").

17. During the Inspection, the EPA inspector observed the operation of Respondent's WWTP, performed sampling of the WWTP's influent and effluent, visually inspected the receiving stream, reviewed the facility's sampling and recordkeeping practices and documented his findings regarding Respondent's compliance with its NPDES permit and the CWA, as follows:

- a. Based on a review of Respondent's discharge monitoring reports ("DMRs"), Respondent's WWTP exceeded the NPDES permit limitations for BOD₅ as follows:

Date of DMR	NPDES Permit Effluent Limit (weekly average / monthly average)	Reported Effluent Limit (weekly average / monthly average)
1 st Quarter 2007	30 mg/L / 20 mg/L	Compliance / 29 mg/L
2 nd Quarter 2007	30 mg/L / 20 mg/L	53 mg/L / 53 mg/L
3 rd Quarter 2007	30 mg/L / 20 mg/L	Compliance / 27 mg/L
4 th Quarter 2007	30 mg/L / 20 mg/L	32 mg/L / 32 mg/L
1 st Quarter 2008	30 mg/L / 20 mg/L	64 mg/L / 64 mg/L
2 nd Quarter 2008	30 mg/L / 20 mg/L	259 mg/L / 259 mg/L
3 rd Quarter 2008	30 mg/L / 20 mg/L	40 mg/L / 40 mg/L
4 th Quarter 2008	30 mg/L / 20 mg/L	158 mg/L / 158 mg/L
1 st Quarter 2009	30 mg/L / 20 mg/L	97 mg/L / 97 mg/L
2 nd Quarter 2009	30 mg/L / 20 mg/L	31 mg/L / 31 mg/L

- b. Based on a review of Respondent's DMRs, Respondent's WWTP exceeded the NPDES permit limitations for TSS as follows:

Date of DMR	NPDES Permit Effluent Limit (weekly average / monthly average)	Reported Effluent Limit (weekly average / monthly average)
2 nd Quarter 2007	30 mg/L / 20 mg/L	40 mg/L / 40 mg/L
4 th Quarter 2007	30 mg/L / 20 mg/L	40 mg/L / 40 mg/L
1 st Quarter 2008	30 mg/L / 20 mg/L	40 mg/L / 40 mg/L
2 nd Quarter 2008	30 mg/L / 20 mg/L	40 mg/L / 40 mg/L
3 rd Quarter 2008	30 mg/L / 20 mg/L	32 mg/L / 32 mg/L
4 th Quarter 2008	30 mg/L / 20 mg/L	100 mg/L / 100 mg/L
1 st Quarter 2009	30 mg/L / 20 mg/L	68 mg/L / 68 mg/L
2 nd Quarter 2009	30 mg/L / 20 mg/L	34 mg/L / 34 mg/L

- c. Based on a review of Respondent's DMRs, Respondent's WWTP exceeded the NPDES permit limitations for Fecal Coliform as follows:

Date of DMR	NPDES Permit Effluent Limit (daily maximum (#/100 ml) / monthly average (#/100 ml))	Reported Effluent Limit (daily maximum (#/100 ml) / monthly average (#/100 ml))
2 nd Quarter 2007	400/1000	310,000
3 rd Quarter 2007	400 / 1000	6180
4 th Quarter 2007	400 / 1000	636,000
2 nd Quarter 2008	400/1000	1,800,000
3 rd Quarter 2008	400 / 1000	94,000
4 th Quarter 2008	400 / 1000	>6,000,000

- d. Based on the analysis of samples collected by the EPA inspector, the Respondent's WWTP exceeded the weekly average and monthly average for BOD₅ mg/L and TSS mg/L on August 12 and August 13, 2009. EPA's analysis of effluent samples from Respondent's WWTP indicated the weekly and monthly averages of BOD₅ at 134 mg/L and 184 mg/L, respectively, and the weekly and monthly averages of TSS at 98 mg/L and 150 mg/L, respectively.

- e. Based on observations and visual inspection, Respondent's effluent discharging directly into an unnamed tributary to Stockton Lake was brown and very turbid with lots of suspended and floating solids.
- f. Based on observations and review of the Respondent's records by the EPA inspector, the Respondent has not maintained the facility in good working order and operated as efficiently as possible, in order to achieve compliance with the terms and conditions of the NPDES permit. Operation and maintenance issues include but are not limited to the failure to keep an operation and maintenance manual for the facility, solids floating in the effluent, and the chlorine reagent tablets were not in contact with the effluent to function properly.
- g. Based on observation and visual inspection by the EPA inspector, the WWTPs outfall was not marked in the field.
- h. Based on observations and review of the Respondent's records by the EPA inspector, the Respondent failed to maintain annual sludge reports at the facility for years 2006, 2007, and 2008.

III. Findings of Violation

18. Respondent violated its NPDES permit by failing to comply with the effluent limitations for BOD₅, TSS, and Fecal Coliform during the time periods identified in Paragraph 17, subparagraphs (a) – (d), above.

19. Respondent violated its NPDES permit by failing to comply with conditions that require all discharges to waters of the state to be free from substances in sufficient amount to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses, as described in Paragraph 17, subparagraph (e), above.

20. Respondent violated its NPDES permit by failing to properly operate and maintain all facilities and systems of control to achieve compliance with the conditions of the NPDES permit, as described in Paragraph 17, subparagraph (f), above.

21. Respondent violated its NPDES permit by failing to comply with conditions that require all outfall to be clearly marked in the field, as described in Paragraph 17, subparagraph (g), above.

22. Respondent violated its NPDES permit by failing to comply with the record keeping conditions, as described in Paragraph 17, subparagraph (h), above.

23. The Respondent's violations of the requirements of its NPDES Permit, as identified in Paragraphs 18 through 22 above, constitute violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

IV. Order for Compliance

24. 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.

25. 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.

26. Within thirty (30) days of the Effective Date of this Order, 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 permit requirements.
- c. An evaluation of the availability of an areawide wastewater treatment system and if an areawide system is available, a plan for ceasing discharges within 90 days from Respondent's WWTP as required by Section C3 of the NPDES permit.
- d. A schedule for conducting at least weekly monitoring of pollutants listed in Section A of the NPDES Permit. The weekly monitoring shall commence upon implementation of the actions to correct the violations cited herein and be conducted for at least 90 days.

27. After review of the information submitted by Respondent pursuant to Paragraph 26, above, EPA may determine that additional information is needed and/or additional corrective measure are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

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

29. 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 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.

Submissions

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

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

31. 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.

V. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

32. 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.

33. 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

34. 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

35. 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

36. 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

37. 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

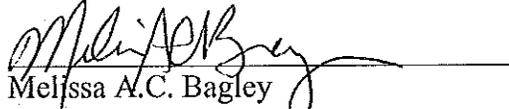
Issued this 22nd day of December, 2009.



William A. Spratlin

Director

Water, Wetlands and Pesticides Division



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:

Mr. Ken Goswick
Registered Agent
American Resorts Cottage Owners Association of Lake Stockton, Inc.
11704 East 37th Terrace
Independence, Missouri 64052;

Mr. Charles Hill
18240 S. 1515 Rd.
American Resorts Cottage Owners Association of Lake Stockton, Inc.
Stockton, Missouri 65785;

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

Cindy Davies
Director
Southwest Regional Office
Missouri Department of Natural Resources
2040 West Woodland
Springfield, Missouri 65807-591.

12/30/09

Date

