

5. The following terms used in this Order are defined as follows:

a. "Building/Private Property Backup" and "Backup" shall mean any release of wastewater from the Respondent's Sanitary Sewer System to buildings or private property. The Respondent would not be responsible for any backup that was caused by: (1) blockages, flow conditions, or malfunctions of a private service connection or other piping/conveyance system that is not owned or operationally controlled by the Respondent; or (2) overland, surface flooding not emanating from the Respondent's Sanitary Sewer System.

b. "Collection System" and "Sanitary Sewer System" shall mean the sewage collection and transmission system (including all pipes, force mains, gravity sewer lines, pumping stations, manholes, and appurtenances thereto) owned or operated by the Respondent and designed to convey wastewater to the Respondent's wastewater treatment plant or to one or more points of discharge.

c. "Current Permits" means the City's NPDES Permits Nos. MO-0085472, effective February 20, 2004; MO-0120529, effective date January 12, 2007 and modified April 6, 2007; MO-0129763, effective date May 28, 2004; MO-0116572, effective date July 26, 2002; MO-0131300, effective date December 8, 2006 and modified January 26, 2007; and MO-0132152, effective date January 5, 2007.

d. "Publicly Owned Treatment Works" or "POTW" shall mean a publicly owned treatment works or POTW as defined in 40 C.F.R. § 403.3(o).

e. "Sanitary Sewer Overflow" and "SSO" shall mean an overflow, spill, diversion, or release of wastewater from the Respondent's Collection System. This term shall include discharges to waters of the State or United States from the Respondent's Sanitary Sewer System, as well as any release of wastewater from the Respondent's Sanitary Sewer System to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups.

f. "Wastewater Treatment Plants" and "WWTPs" shall mean the sewage treatment plants operated by the Respondent and all components of such sewage treatment plant and set forth as follows:

- a. Duckett Creek Sanitary District Treatment Plant #1, NPDES Permit MO-0085472, located in St. Charles County, at 2950 Green Bottoms Road, St. Charles, MO, 63303;

- b. Duckett Creek Sanitary District Treatment Plant #2, NPDES Permit MO-0116572, located in St. Charles County, at Missouri Research Park Drive, St. Charles, MO 63304;
- c. DCSD, Augusta Shores, NPDES Permit MO-0120529, located in St. Charles County, at 4503 Hwy 94 South, Augusta, MO 63332;
- d. DCSD, Steven A. Rogers Treatment Plant, NPDES Permit MO-0129763, located in St. Charles County, at 7001 South Highway 94, St. Charles, MO 63304.
- e. DCSD, Riverdale Subdivision, NPDES Permit MO-0132152, located in St. Charles County, at O'Fallon, MO 63366.
- f. DCSD, Wyndgate Subdivision, NPDES Permit MO-0131300, located in St. Charles County, at 128 Wyndgate Valley Dr., O'Fallon, MO 63366.

III. Jurisdiction and General Allegations

6. 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.

7. The Respondent, Duckett Creek Sanitary District, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. At all relevant times, Respondent has owned and operated wastewater treatment plants ("WWTPs") and their associated sewer and transmission systems, which receive and treat wastewater from residential and commercial connections within the city of St. Charles, Missouri and throughout St. Charles County, Missouri.

9. Respondent's six WWTPs and corresponding collection system include approximately 500 miles of sewer line, 10,000 access structures and 37 pump stations. This collection system services a population of approximately 118,000, which includes 31,400 residential connections and 600 commercial connections to sanitary sewer lines.

10. At all relevant times, Respondent has "discharged pollutants" from its POTW within the meaning of Section 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 the Missouri River and its associated tributaries, within the meaning of 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

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

12. On February 8 and 9, 2006, 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), including an observation of the Respondent's POTW and inspection of four of Respondent's WWTPs, listed below:

- i. Duckett Creek Sanitary District Treatment Plant #1, NPDES Permit MO-0085472, issued February 20, 2004 and expires February 19, 2009;
- ii. Duckett Creek Sanitary District Treatment Plant #2, NPDES Permit MO-0116572, issued July 25, 2002 and expires July 25, 2007;
- iii. DCSD, Augusta Shores, NPDES Permit MO-0120529, issued January 12, 2007 and expires January 11, 2012; and
- iv. DCSD, Steven A. Rogers Treatment Plant, NPDES Permit MO-0129763, issued May 28, 2004 and expires May 27, 2009.

13. At all relevant times, Respondent's NPDES permits for each WWTP have authorized Respondent to discharge pollutants only from specified point sources, identified in each permit 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.

14. Within the past five years, Respondent has experienced discharges of untreated wastewater from manholes, pump stations, sewer line breaks, and/or other locations within the Respondent's wastewater collection system, also known as sanitary sewer overflows ('SSOs'), including private property/basement backups. None of these locations of these discharges are numbered outfalls identified in Respondent's NPDES permits.

15. Respondent's unpermitted discharges from its POTW have resulted from multiple causes, including the need for improvement of operation maintenance of its collection system and breaks and blockages in sewer pipes, force mains, and manholes.

16. Respondent's unpermitted discharges from its POTW created conditions whereby the receiving waters contained one or more of the following: putrescent, unsightly, or harmful bottom deposits; oil, scum, and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses; and substances resulting in unsightly color, turbidity and

offensive odor. In addition, discharges of raw sewage contain organic matter, bacteria, and potential pathogens in amounts that may result in toxicity to animal and aquatic life. Pathogens in raw sewage can also cause a number of diseases in humans such as gastroenteritis, dysentery, and cholera. These diseases are communicable, and may result in toxicity to humans and/or create a significant human health hazard from incidental contact with these waters.

17. Each discharge of pollutants as identified in Paragraphs 14 and 15 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 Duckett Creek Sanitary District, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. Findings of Violation

Unpermitted Discharges from Sanitary Sewer System

18. Paragraphs 1-17 are realleged and incorporated herein by reference.

19. On at least 50 different occasions, not including private property/building basement backups, between at least August 2002 and February 2007, and upon information and belief continuing to the present, Respondent has discharged pollutants from point sources within its separate sanitary sewer collection and transmission system, including without limitation, manholes, pump stations, and sewer lines, that were not identified in its NPDES permits as authorized outfalls (hereinafter referred to as "sanitary sewer overflows" or "SSOs"). These SSOs are not permitted or otherwise authorized by the CWA.

20. Each day of each discharge referred to in Paragraph 19 constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violation of Proper Operation and Maintenance Condition (Standard Condition I.B.3&4) in Respondent's NPDES Permits

21. Paragraphs 1-17 are realleged and incorporated herein by reference.

22. Pursuant to 40 C.F.R. § 122.41(e), each of Respondent's NPDES Permits 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 each of Respondent's NPDES Permits require 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").

23. Many of the illegal discharges alleged in Paragraph 19 above, resulted, in whole or in part, from Respondent's failure to comply with the Proper Operation and Maintenance Condition in Respondent's NPDES permits (Part I.B.3&4), in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

24. Each day Respondent failed to comply with the Proper Operation and Maintenance Condition of its NPDES permits (Part I.B.3&4) constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

V. Consent Agreement

The Complainant and Respondent hereby agree as follows:

25. Respondent admits the jurisdictional allegations of the Complaint.

26. Respondent neither admits nor denies the general factual allegations set forth in the Complaint, which is incorporated herein by reference.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint.

28. In settlement of this matter, Respondent agrees that on or before the dates set forth in the Order, it will complete the compliance activities set forth in the Order for Compliance.

29. Respondent and Complainant agree to pay their own costs and attorneys' fees incurred as a result of these actions.

30. Respondent consents to the issuance of the Order for Compliance, hereinafter recited and consents to perform the compliance activities as set forth in this Order for Compliance.

31. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Order for Compliance.

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

VI. Order for Compliance

33. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a)

and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in Paragraphs 34 through 40.

Collection System Operation and Maintenance Improvements

34. Within 180 days of the issuance of this Order, the Respondent shall submit to EPA for review and approval a comprehensive Collection System Operation and Maintenance Program (O&M Program) with the goal to eliminate all SSOs, including Building/Private Property Backups. The O&M Program shall include at a minimum the following elements:

- a. Routine proactive inspection of the wastewater collection and transmission system and inspection of all gravity sewer lines and, when necessary, the cleaning and/or repairing at a minimum of every 5 years for clay sewer lines and 7 years for PVC lines;
- b. Sealing (where appropriate) and maintenance of manholes;
- c. Identification and remediation of poor construction;
- d. Procedures for ensuring that new sewers and connections are properly designed and constructed (including testing of new sewer installations) to prevent overflows and to ensure that new connections of inflow sources are prohibited;
- e. Procedures for ensuring that rehabilitation projects are properly designed and constructed (including testing of rehabilitation installations) to prevent overflows;
- f. A root control program that addresses, at minimum, scheduling and performing corrective measures including both short-term mitigation of root intrusion (i.e. routine maintenance) and rehabilitation of the areas in which root intrusion has caused recurring blockages (i.e., sewer replacement or relining), and a proposal that includes schedules of inspections of known problem areas; and
- g. Procedures for tracking, record-keeping, routine inspection and service for all pumps, including but not limited to engines, motors, generators, pumps, wet wells, impellers, seals, bearings, wear clearances, couplings, drives, and related equipment; and
- h. Procedures for proper and adequate operation and maintenance at all pump stations to ensure maximum capacity to prevent SSOs.

35. Within 60 days of receipt of EPA's comment on the Operation and Maintenance Program, the Respondent shall modify the Operation and Maintenance Program accordingly and shall implement the Operation and Maintenance Program.

Grease Control Program

36. Within 60 days of the issuance of this Order, the Respondent shall submit to EPA for review and comment a Grease Control Program to ensure that grease accumulations are not impacting the wastewater collection and transmission system capacity and contributing to SSOs.

37. Within 30 days of receipt of EPA's comments on the Grease Control Program, the Respondent shall modify the Grease Control Program accordingly and shall begin implementation of the Grease Control Program.

SSO and Building/Private Property Backup Emergency Response Plan

38. The Respondent shall, within 60 days of the issuance of this Order, provide EPA for review and comment a revised, if applicable, SSO and Building/Private Property Backup Emergency Response Plan ("Emergency Response Plan") that results in all SSOs, including Building/Private Property Backups being responded to and halted as rapidly as possible, results in mitigation measures being employed whenever appropriate, results in appropriate measures being implemented to prevent recurrence, and results in appropriate measures being implemented to respond to the SSOs and Building/Private Property Backups.

39. The Emergency Response Plan shall provide procedures for responding to SSOs, including Building/Private Property Backups, to minimize the environmental impact and potential human health risks. The Emergency Response Plan shall include, but not be limited to:

- a. A detailed notification plan to take appropriate and immediate action to adequately provide notice when necessary to warn the public of the potential for harm (e.g. through the local news media or other news including signs or barricades to restrict access) of the SSO from the wastewater collection and transmission system;
- b. A detailed description of the actions the Respondent will undertake to provide notice to appropriate federal, state or local agencies/authorities;
- c. A detailed plan (including the development of a response standard operating procedures) to minimize the volume of untreated wastewater transmitted to the portion of the wastewater collection and transmission system impacted by the events precipitating the SSO to minimize overflow volumes;
- d. For Building/Private Property Backups, the Emergency Response Plan shall include a detailed plan describing the standard operating procedures to be followed by the Respondent's personnel in responding to a Building/Private Property Backup, including:

- i. A description of methods for communication with customers about:
 - A. How to report Building/Private Property Backups, and
 - B. How to obtain clean-up;
 - ii. A description of Respondent's response to Building/Private Property Backups, including:
 - A. The timeframe for responses,
 - B. The measures taken by Respondent to clean-up Building/Private Property Backups found to be caused by conditions in the Respondent's Collection System. Such measures shall include procedures necessary to disinfect and/or remove items potentially contaminated by Building/Private Property Backups, and shall include wet vacuuming or other removal of spillage, wiping floors and walls with cleaning solution and disinfectant, flushing out and disinfecting plumbing fixtures, carpet cleaning and/or replacement and other appropriate measures to disinfect and/or remove items potentially contaminated by Building/Private Property Backups, and
 - C. The measures taken to correct or repair conditions in the Collection System causing or contributing to Building/Private Property Backups, and
 - iii. A description of the Respondent's follow-up process to insure adequacy of cleanup.
- e. A detailed list of the resources to be used to correct or repair the condition causing or contributing to the SSO;
- f. A plan to ensure the preparedness, including responsiveness training of Respondent's employee's, contractors, and personnel of other affected agencies necessary for the effective implementation of the Emergency Response Plan in the event of an SSO;
- g. Identification of overflow locations within the sewershed served by each Pump Station and those locations at which a SSO is likely to occur first in the event of Pump Stations failure for each Pump Station; and
- h. The Emergency Response plan shall include station-specific emergency procedures, Bypass strategies, and estimated storage capacity (i.e., maximum volume of sewage that can be stored in the vent of a Pump Station failure or repair without causing a SSO and estimated time during which sewage can be stored before an SSO will occur). In the event that a repair may cause or lengthen the time of a SSO, the Emergency Response Plan shall provide a procedure for determining when additional storage or pump around will be needed.

40. Within 30 days of receipt of EPA's comment on the Emergency Response Plan for any SSOs and Building/Private Property Backups, the Respondent shall modify the Emergency Response Plan accordingly and shall implement the Emergency Response Plan.

Submissions

41. All documents required to be submitted to EPA by this Order, shall be submitted by mail to **Ms. Berla Johnson, Compliance Officer**, at the following address:

U.S. Environmental Protection Agency – Region VII
Water, Wetlands and Pesticides Division
901 North 5th Street
Kansas City, Kansas 66101.

42. A copy of 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, St. Louis Regional Office
Missouri Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, Missouri 63125.

Certification

43. All submissions made by Respondent to EPA and MDNR pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.22:

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.

VI. General Provisions

Effect of Compliance with the terms of this Order for Compliance

44. 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 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.

45. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The 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

46. 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

47. 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

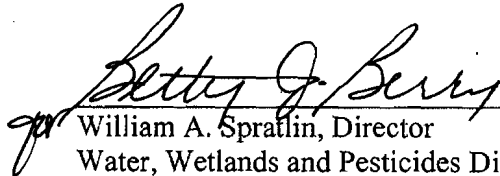
48. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

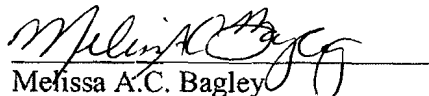
Termination

49. Within ninety (90) days after Respondent has satisfied the terms of this Order by establishing, and successfully implementing for a period of twelve (12) months, all the operation and maintenance improvements and programs and other requirements in this Order as set forth in Paragraphs 34 through 40, Respondent shall submit for EPA review and approval a final report ("Final Report") that includes a description of all of the actions which have been taken toward achieving compliance with this Order, an assessment of the effectiveness of such actions in preventing SSOs, and an analysis of whether additional actions beyond the scope of this Order are necessary to further eliminate SSOs. The EPA shall use its best efforts to expeditiously review the Final Report. If EPA determines that Respondent has provided a satisfactory Final Report as required above and has satisfied the terms of this Order as set forth above, EPA will provide notice to Respondent, and this Order shall be deemed terminated. If EPA determines that the Final Report is not satisfactory or that Respondent has not satisfied any term of this Order as set forth above, EPA will notify Respondent and provide a list of the deficiencies which may include but not be limited to a requirement that Respondent modify an operation and maintenance program as appropriate in order to correct a deficiency. In this event, Respondent shall correct such deficiencies, immediately implement such corrections, and shall submit a modified Final Report for review and approval in accordance with the EPA notice.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 26th day of September, 2007.


William A. Spratlin, Director
Water, Wetlands and Pesticides Division


Melissa A.C. Bagley
Assistant Regional Counsel

*In the Matter of
Duckett Creek Sanitary District
Findings of Violation Order for Compliance*

FOR RESPONDENT:

IN THE MATTER OF Duckett Creek Sanitary District, Respondent
Docket No. CWA-07-2007-0055

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings of Violation and Order for Compliance on Consent 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:

Dr. Thomas Engle, Ph.D.
Executive Director
Duckett Creek Sanitary District
3550 Highway K
O'Fallon, Missouri 63368-8384


Copy by First Class Mail to:

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

and

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

Dated: 9/28/07


Kathy Robinson
Hearing Clerk, Region 7