

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

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BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
THE CITY OF JEFFERSON, MISSOURI)
)
Respondent,)
)
Proceedings under Section)
309(a)(3) of the Clean Water Act,)
33 U.S.C. §1319(a)(3))
_____)

Docket No. CWA-07-2013-0047

FINDINGS OF VIOLATION AND
ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to the City of Jefferson, Missouri (“City” or “Respondent”) pursuant to the authority vested in the Administrator of EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § and 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division of EPA, Region 7.

2. The Director, Water, Wetlands and Pesticides Division, EPA, Region 7, on behalf of the Administrator of the EPA, together with the City, enter into this Section 309(a)(3) Order for Compliance on Consent in order to achieve compliance with the CWA, 33 U.S.C. § 1251 *et seq.*

3. EPA and the City (“collectively referred to herein as the “Parties”) have negotiated in good faith and have reached a settlement of the issues in this Order.

4. The Parties agree that settlement of the claims alleged in the Allegations of Violation and Order, consisting of the unauthorized discharges occurring between 2009 through the

present, as described in Section III, is fair, reasonable, and in the public interest and entry of this Order is the most appropriate way of resolving the claims alleged herein.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. For the purposes of this Order, Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations contained in the Allegations of Violation and Order.

II. Statutory and Regulatory Framework

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362,.

8. 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. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

9. As defined by 40 C.F.R. § 403.3(q), a Publically Owned Treatment Works ("POTW") includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

10. 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, the implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

11. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

III. EPA Allegations

Allegations of Fact and Law

12. The City of Jefferson is a political subdivision of the state organized under the laws of Missouri, and as such is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The City owns and operates a POTW that receives and treats wastewater from various residential, commercial and industrial sources.

14. The City’s POTW discharges to the Missouri River, which is a “navigable water” and “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

15. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

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

17. The City’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

18. MDNR issued NPDES Permit No. MO-0094846 to the City for discharges from its POTW to the Missouri River. The NPDES permit (hereafter “NPDES permit”) became effective December 12, 2011, and expires December 11, 2016.

19. In December 2006, EPA performed a Compliance Sampling and Sanitary Sewer Overflow (“SSO”) Inspection (hereafter “the EPA POTW inspection”) of the City’s POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City’s compliance with its NPDES permit and the CWA.

20. During the EPA POTW inspection, the inspector collected wastewater samples from the City’s Waste Water Treatment Plant (“WWTP”) influent and effluent, reviewed the City’s records related to the NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges.

21. On April 24, 2008, September 15, 2009 and September 28, 2011 EPA issued Requests for Information regarding the City’s POTW pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to further evaluate the City’s compliance with its NPDES permit and the CWA.

The City submitted a timely response to each of the Requests for Information on May 2, 2008, September 23, 2009, and October 4, 2011, respectively.

22. The City submitted to EPA SSO/Backup Reports for the years 2008 through 2012, as part of the City's initial and subsequent responses to the Requests for Information described in Paragraph 21.

23. Respondent's NPDES permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the NPDES permit as one or more "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permit.

24. Within the past five years, Respondent has discharged untreated wastewater to waters of the United States from lift stations and/or other locations within the Respondent's POTW, as described specifically in the table in Appendix A. None of the locations of these discharges are numbered outfalls identified in Respondent's NPDES permit.

25. Of the unauthorized discharges described in Paragraph 24, fifteen (15) discharged untreated wastewater to Boggs Creek, Gray's Creek, Wear's Creek, Missouri River and/or their tributaries. These waters are "navigable waters" and "waters of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation, 40 C.F.R. § 122.2.

26. EPA finds that each unauthorized discharge identified in Paragraphs 24 and 25 above, is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, and as such is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Allegations of Violation

27. The facts stated in Paragraphs 11 through 26, above, are herein incorporated.

Unpermitted Discharges

28. Upon review of the City's SSO Reports submitted to MDNR described in Paragraph 22, the City has discharged pollutants from the City's POTW at locations other than Outfall 001 on at least fifteen (15) occasions between October 2009 and June 2012, as specifically described in Appendix A. These unauthorized discharges are not permitted or otherwise authorized by the CWA.

29. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violation of Respondent's NPDES Permit

30. 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... ." 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 and 4 collectively referred to as the "Proper Operation and Maintenance Conditions").

31. Part A, Effluent Limitations and Monitoring Requirements, of Respondent's NPDES permit authorizes discharges *only* from Outfall 001 at the wastewater treatment facility.

32. Paragraph 5, Standard Conditions, of Respondent's NPDES permit prohibits any bypass or shut down of facilities or tributary sewer system that results in a violation of permit limits or conditions, except under circumstances not applicable here.

33. Many of the unauthorized discharges alleged in Paragraphs 24 and 25 above, resulted, in whole or in part, from Respondent's failure to properly operate and maintain the POTW in compliance with Respondent's NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

34. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations and considering the information currently available alleged in the paragraphs above, EPA finds that a reasonable time for Respondent to comply with the requirement of Section 301(a) of the CWA to address the SSOs is by no later than July 31, 2018.

IV. Section 309(a) Order for Compliance on Consent

35. Based on the EPA FINDINGS set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), IT IS HEREBY ORDERED AND AGREED TO:

Consistent with EPA's finding in Paragraph 34 above, Respondent agrees to take all measures necessary with the goal of eliminating unauthorized discharges of untreated wastewater from its POTW to waters of the United States by no later than July 31, 2018. Specifically, to achieve that goal for purposes of this Order, Respondent agrees to undertake sewer rehabilitation and improvement projects in sewer basins 5, 7, 12, and 13A and replace Hayselton Pump Station. Additional information about these POTW rehabilitation and improvement projects is provided for in Appendix B. Respondent also agrees to prepare an updated Capacity, Management, Operations, and Maintenance ("CMOM") program for the POTW and provide a

copy of the same to EPA for review and comment within eighteen (18) months of the effective date of this Order. Respondent agrees that it will implement its CMOM program immediately upon submittal to EPA in order to properly operate and maintain its POTW as required by its NPDES permit. No later than September 30, 2018, Respondent shall submit a written certification to EPA, with a copy to MDNR, that all corrective measures required pursuant to this Order have been completed.

36. After review of the certification and supporting information submitted by Respondent, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate. Alternatively, EPA may accept the certification and terminate this Order pursuant to Paragraph 50 below.

37. The City shall at all times comply with requirements established by the state of Missouri regarding the 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 licensed 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.

V. Reporting

38. *Reporting to EPA and MDNR:* In addition to the submittals required by Paragraph 35 above, the City shall submit to EPA, with a copy to MDNR, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every January 28 and July 28 until termination of this Order pursuant to Paragraph 50 below; the first report is due January 28, 2015. Each report shall include, at a minimum:

- a. **Overflow Reports.** The City shall include copies of reports submitted to MDNR reporting bypasses, SSOs or building backups. The reports should include date of occurrence, location, cause, and receiving water;
- b. **Compliance Progress.** Each report shall include a detailed update on the progress of the compliance measures, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period; and

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

Jodi Bruno, or her successor
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

Paul Dickerson, or his successor
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176.

VI. General Provisions

41. Failure to comply with the terms of the Section 309(a)(3) Compliance Order may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that you have violated the Act and failed to comply with the terms of the Order.

Reservation of Rights

42. 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 CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

43. With respect to matters not addressed in this 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/or other legal remedies allowed by law.

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. Subject to the limitations of Paragraph 44, above, Respondent reserves the right to contest liability and/or any penalties sought in any subsequent action filed by EPA to seek penalties for violation of this Order on Consent, and reserves the right to contest liability and/or penalties in any subsequent action filed by EPA for any violations alleged in the Findings, above.

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.

Modification

48. At EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by EPA by written notice to Respondent, without further formal amendment to the Order. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Effective Date

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

Termination

50. 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 City has complied with the requirements of Section IV of this Order and demonstrated general compliance as determined by EPA with the terms of its permits.

Signatories

51. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this 21st day of July, 2014.

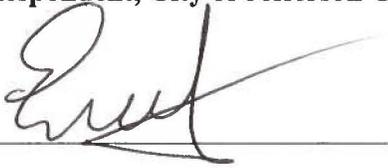


Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7



Melissa Bagley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Jefferson City, Missouri:



Signature

7/11/2014

Date

ERIC STRUEMPF

Name

Mayor

Title

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 Docket Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

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:

The Honorable Eric Struempf
Mayor, Jefferson City
320 East McCarty Street
Jefferson City, Missouri 65101

and by first class mail to:

Paul Dickerson, Chief, or his successor
Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176.

7/22/14
Date

Kathy Robinson

Appendix A- Jefferson City Sanitary Sewer Overflows

Date	Address	Cause	Receiving Water
10/11/2009	Oscar Dr	Heavy Rain	Tributary to Ditch
10/30/2009	Grant St	Heavy Rain	Boggs Creek
10/30/2009	Jaycee Dr. @ Santa Cruse Restaurant	Heavy rain	Tributary to Wears Creek
10/30/2009	Monroe St	Heavy Rain	Tributary to Wears Creek
10/30/2009	Westly St. and Geneva St	Heavy Rain	Tributary to Gray Creek
11/15/2009	112 Elm St	Bypass	Tributary to Boggs Creek
11/16/2009	1520 Calvin Lane	heavy rain	Tributary to Boggs Creek
11/16/2009	Grant St	heavy rain	Tributary to Boggs Creek
5/8/2010	Rock Hill Rd	leaking valve	Tributary to Gray Creek
6/12/2010	2804 Sue	Force main break	Unnamed Tributary
3/13/2011	3228 Victoria	Force main break	Tributary to Gray Creek
3/30/2011	438 Valley View Ct.	grease	Tributary to Wears Creek
7/22/2011	1305 Moreau	broken pipe	Unnamed Tributary
6/5/2012	2108 Louis Circle	blockage	Tributary to Boggs Creek
6/26/2012	2634 Huntleigh Place MH 6034	blockage	Tributary to Wears Creek

APPENDIX B- SCHEDULE

The City of Jefferson, Missouri (respondent) shall implement the Capital Improvements described below in accordance with the indicated schedules.

Wet Weather SSO Removal Measure	Project Description	Date of Project Substantial Completion
Basin 12 Rehabilitation and Relief Sewers	Replace 23,000 lineal feet of sanitary sewer to reduce infiltration/inflow. Install 4,900 lineal feet of relief sewers. Eliminates two remaining constructed wet weather outfalls.	August, 2016
Basin 5, 6 & 7 Relief Sewers	Install 9,500 lineal feet of relief sewers. Eliminates two remaining constructed wet weather outfalls.	September, 2016
Replace Hayselton Pump Station	Build new pump station to accommodate wet weather flows. Eliminates one remaining constructed wet weather outfalls.	September, 2017
Basin 13A wet weather SSO removal	Perform flow monitoring of the constructed SSO outfall to determine activation frequency, if any. Design and implement an engineering solution to address it.	July, 2018

All constructed wet weather reliefs will be addressed upon completion of these capital improvements.