

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
) SECOND AMENDED FINDINGS
) OF VIOLATION AND ORDER
) FOR COMPLIANCE
)
Metropolitan St. Louis Sewer District)
)
) Respondent
) Docket No. CWA-07-2007-0042
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))

I. Preliminary Statement

1. These SECOND AMENDED 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 VII, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region VII. On April 30, 2007, FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE was issued to the Metropolitan St. Louis Sewer District ("MSD"). Based on additional information presented by MSD, EPA is issuing this Second Amended Order.
2. MSD serves a population of approximately 1.4 million and the MSD service area includes 90% of the City of St. Louis and St. Louis County. As of January 1, 2000, MSD serviced 428,000 accounts: 354,000 single family residence; 48,000 multi-family (apartments, condos) and 26,000 commercial/industrial. MSD currently operates nine treatment facilities and, treats an average of 320 million gallons of sewage per day. Additionally, MSD is responsible for operating and maintaining approximately 8,900 miles of sewers, including 2,617 miles of stormwater sewers, 4,495 miles of sanitary sewers and 1,847 miles of combined sewers.
3. MSD owns and operates Publicly Owned Treatment Works ("POTWs") that include nine wastewater treatment plants and associated collection systems that serve the citizens of St. Louis, Missouri, and several surrounding counties and municipalities. Seven of the wastewater treatment plants owned and operated by MSD are generally located within the separate sanitary sewer system and discharge pollutants into the Mississippi River, Meramec River and Missouri River and their tributaries. These separate sanitary sewer system wastewater treatment plants are the Coldwater Creek

Wastewater Treatment Facility, Fenton Wastewater Treatment Facility, Lower Meramec Wastewater Treatment Facility, Missouri River Wastewater Treatment Facility, Baumgartner Lagoon, Grand Glaize Wastewater Treatment Facility, and the New Lower Meramec Wastewater Treatment facility. MSD also owns and operates two wastewater treatment plants generally located within the combined sewer system area; Bissell Point Wastewater Treatment Plant and the Lemay Wastewater Treatment Plant. These treatment plants discharge pollutants into the Mississippi River.

4. 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”) pursuant to Section 402 of the CWA and its implementing regulations. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA and NPDES permits.

II. Jurisdiction and Findings of Violation

The EPA finds:

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with permits issued under the authority of 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.
6. MSD is a “person” within the meaning of Section 502(5) the CWA, 33 U.S.C. § 1362(5).
7. Pursuant to § 402 of the CWA, 33 U.S.C. § 1342, MDNR has issued NPDES Permits to MSD that are listed in Table 1:

TABLE 1: MDNR Issued NPDES Individual Wastewater Permits for MSD POTWs

Permit No.	Issued	Expiration Date	Facility Name
MO0025178	12/30/2005 Rev. 1/27/2006	12/29/2010	Bissell Point WWTF
MO0088463	11/20/2004 Rev. 3/09/2007	2/19/2009	Baumgartner Lagoon
MO0025160	12/30/2005	12/29/2010	Coldwater Creek WWTF
MO0086126	3/23/2001	3/22/2006	Fenton WWTF
MO0025151	12/30/2005 Rev. 1/27/2006	12/29/2010	Lemay WWTF
MO00100978	10/29/2004	10/29/2009	Lower Meramec WWTF
MO0004391	12/30/2005 Rev. 3/31/2006	12/29/2010	Missouri River WWTF
MO0010362	1/26/2007	1/25/2012	Grand Glaize WWTF
MO0127949	2/28/2007	2/27/2012	New Lower Meramec WWTF

8. Within the separate sanitary sewer system, MSD has more than 300 constructed sanitary sewer overflows (“SSOs”) which are not authorized by NPDES permits. **Attachment A**
9. Discharges from these constructed SSOs, when activated, are not reported to either MDNR or the EPA.
10. Discharges from these constructed SSOs contain untreated sewage which discharges to urban streams, including Coldwater Creek, Deer Creek, River Des Peres, Creve Coeur Creek, Grand Glaize Creek, Fee Fee Creek, Maline Creek, Watkins Creek, Marfigney Creek, Mattese Creek, Gravois Creek, and Mackenzie Creek.
11. Since 1999, MSD has installed flow meters at several of the constructed SSOs. MSD operated these meters for periods ranging from five to nine months at each SSO, metering approximately eight constructed SSO locations per year. Table 2 below lists the number of constructed SSOs by receiving stream and the number of metered sites per discrete receiving stream.

TABLE 2: Number of Existing, Constructed SSOs by Receiving Stream

<u>Receiving Stream</u>	<u>Existing</u>	<u>Metered</u>	<u>Receiving Stream</u>	<u>Existing</u>	<u>Metered</u>
Maline Creek	37	12	Hampton Creek	2	
Coldwater Creek	36	4	Meramec Bottom	2	2
River Des Peres	35	1	Meramec River	2	
Deer Creek	32	6	Musick Creek	2	
Gravois Creek	30		Sappington Creek	2	
Fee Fee Creek	17	8	St. George Creek	2	
Black Creek	14		Sugar Creek	2	
Creve Coeur Creek	14	2	Baden Creek	1	
Two Mile Creek	14	1	Benbush Creek	1	
Mattese Creek	9		Fenton Creek	1	1
Mississippi River	9		Gingras Creek	1	
Fishpot Creek	8		Mackenzie Creek	1	
Grand Glaize Creek	6	1	Mehlville Creek	1	

Watkins Creek	6	1	Missouri River	1	
Martigney Creek	4		Mulberry Creek	1	
Shady Grove Creek	4		Rockhill Creek	1	
Fountain Creek	3		Sinkhole Creek	1	
Caulks Creek	2	1	Yarnell Creek	1	
TOTAL	305	26			

12. Based on data provided by MSD Operations Department in a file titled *CSO and SSO Inspections.rtf*, which was submitted to EPA on December 16, 2006, MSD conducts weekly inspections at all existing constructed SSOs. However, MSD indicates they do not track any discharge data collected during these routine cleaning inspections. MSD does not have a program in place to identify the activation of each constructed SSO location nor report occurrences to MDNR or EPA. However, MSD has conducted overflow monitoring for 40 constructed SSOs and provided that data to EPA during the February 2006 site visit. Analysis of the MSD flow metering data for these 40 metered, constructed SSOs indicates that nearly 21 million gallons of sewage was discharged during the period of review. While direct evidence does not exist, an extrapolation of the data from the 40 metered sites to all 300 plus sites shows that annually, upwards of an estimated 226 million gallons of untreated sewage are being discharged into receiving waters from an estimated 2,772 discharge events.

13. The majority of more than 300 constructed SSOs are located in residential neighborhoods, public parks and other publicly accessible locations; there are no warning signs to alert the public to avoid these areas and not play, wade, swim or fish in waters contaminated with untreated sewage.

14. These SSOs, when activated, contain untreated sewage that carries bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms) and borroughs (inhaled molds and fungi). People exposed to these microbial pathogens are at risk for a variety of associated diseases such as gastroenteritis, hepatitis, salmonellosis, shigellosis, infection caused by E. coli, giardiasis, amoebic dysentery, skin rashes, "pink eye", etc. People can be exposed through direct contact in areas of public access, such as lawns, streets, waters used for recreation, or in homes or businesses. MSD's separate sanitary sewage collection system includes 300 plus constructed outfalls that when operating constitute illegal discharges directly to urban streams. Due to their inclination to play in or around creeks, children are especially at risk for illnesses associated with untreated sewage due to increased exposure. Children are more likely to ingest contaminated water (accidentally and on purpose). In general, children are more susceptible to disease, including those caused by untreated sewage.

15. Part C of MSD's NPDES Permits, Special Conditions, requires:

2. All outfalls must be clearly marked in the field

16. Part 1 – General Conditions, Section B Management Requirements requires:

5. Bypassing

- a. Any bypass or shut down of a wastewater treatment facility and tributary sewer system or any part of such a facility and sewer system that results in a violation of permit limits or conditions is prohibited except:
 - (i) where unavoidable to prevent loss of life, personal injury, or severe property damages; and
 - (ii) where unavoidable excessive storm drainage or runoff would catastrophically damage any facilities or processes necessary for compliance with the effluent limitations and conditions of this permit;
 - (iii) where maintenance is necessary to ensure efficient operation and alternative measures have been taken to maintain effluent quality during the period of maintenance.
- b. The permittee shall notify MDNR in writing of all bypasses or shut down that result in a violation of permit limits or conditions. This section does not excuse any person from liability, unless such relief is otherwise provided by the statute.

17. Discharges from constructed SSOs as described in the above paragraphs are not permitted in compliance with § 301(a) and § 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

18. Constructed SSOs in MSD's service area are not clearly marked in the field.

19. Failures to clearly mark all outfalls are violations of § 301 and § 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

20. Failures to report bypasses from constructed SSOs are violations of § 301(a) and § 402 of the CWA, U.S.C. § 1311(a) and § 1342.

21. Based on the Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS MSD to meet the requirements set forth hereafter in this Second Amended Order.

III. Second Amended Order for Compliance

22. MSD shall provide notice to Martha R. Steincamp of MSD's intent to comply with this Second Amended Order within 24 hours of receipt.

23. MSD shall post signs as depicted in **Attachment B** to this Second Amended Order. A schedule for installing these signs follows in Paragraph 24. The sign must be posted on all streams, creeks, drainage ditches, and swales receiving SSO discharges. Postings must be at all surface discharge locations and within one hundred (100) feet downstream of all discharge locations. Signs must be posted at approximately one hundred (100) yard intervals at public access points located within two miles downstream from the discharge. Signs must be placed on both sides of the stream and must be placed so as to be visible to the public from both banks. The signs must be visible to the public approaching the stream from the land. Any parks, golf courses or other recreation areas within the posting area must have signs prominently displayed. Inspections of constructed SSO locations must be performed at least monthly to ensure that each sign is in place, unobstructed, and in good condition. All missing, damaged and obstructed signs must be corrected within twenty-four hours of discovery. The signs must be a minimum of 18" by 24". Inspection of all downstream signs shall be at least three times during the recreation season in March, June and September. A copy of the sign must be included annually (near the beginning of the recreation season) in customer bill inserts with an explanation of why the signs have been installed.
24. The sign depicted in Attachment B shall be obtained by MSD and deployed as outlined in Paragraph 23 at all surface discharge locations, within five (5) weeks from the date of signing of this Second Amended Order.

The notice to customers required in Paragraph 23, shall be forwarded by MSD to all its customers by end July 2008.

Additionally, MSD shall post a notice on their website within thirty (30) days of the signing of this Second Amended Order, advising that EPA has ordered MSD to deploy these signs. The sign shall be displayed with this notice. This notice shall include a description of where each sign will be installed in relation to the constructed SSO; why the sign is being installed and the phone number anyone observing a discharge can call to report it.

25. MSD shall provide notice of all known discharges from constructed SSOs to EPA and MDNR as required by Part 1- General Conditions B Management Requirements on a quarterly basis, beginning in August 2007, using the form in Appendix C of MSD's March 15, 2007 submission. In addition, MSD shall amend its current quarterly reporting process to include additional information. As denoted below, some of the additional information is required only once while some is required to be submitted with every quarterly report.

Submit the following information in the next quarterly report:

- i. A summary report from March 1 through April 30, 2007, as this data has not been provided to EPA.
- ii. In order to ensure the accuracy and reliability of MSD's past and future quarterly reports, provide the raw activation data along with any qualifiers for

the period August 1 through October 27, 2007. The raw data shall be provided in electronic format (e.g. Microsoft Excel spreadsheet). MSD shall ensure that the raw data is provided in a format that will allow EPA to evaluate MSD's interpretation of raw data resulting in the preparation of quarterly reports. If needed, provide written explanations or instructions for interpreting the raw data.

- iii. A comprehensive list or tables that clearly denotes the monitoring device installed (e.g. level sensor, Tideflex and data recorder) for each constructed SSO location. If no monitoring device is currently installed, present the anticipated date of installation.
- iv. Clarification regarding how the recurring inspections of constructed SSOs are used to ensure the proper functionality of the activation monitors to prevent physical defects, debris, or equipment malfunction from compromising the data collection efforts. Also, clarification as to whether MSD inspects each constructed SSO on a weekly or monthly basis and the purpose of the recurring inspections.

Submit the following information in all future quarterly reports:

- i. Provide a narrative statement that identifies all overflow events that MSD considered invalid. For each invalidated event, provide the raw data for the event and the rationale as to why the event was invalidated.
- ii. Amend the reporting schedule for all future reports to follow the quarterly schedule identified in MSD's December 22, 2006 response. All future reporting will be done on a quarterly basis for the periods ending June 30, September 30, December 31, and March 31 with reports submitted within 45 days of the end of the quarter.

26. This Second Amended Order is an interim measure to address a serious problem.

27. This Second Amended 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. The EPA retains the right to seek any and all remedies available under Section 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 Amended Order. Issuance of this Second Amended 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.

IV. General Provisions

28. MSD's compliance with this Second Amended Order does not constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, or with MSD's NPDES permits. MSD shall remain solely responsible for compliance with the terms of the Clean Water Act and this Second Amended Order. Issuance of this Second Amended

Order shall not be deemed an election by EPA to forego any civil or criminal action to seek penalties, fines or other appropriate relief under the Act, including criminal punishment as provided in Section 309 of the Act, 33 U.S.C. § 1319.

V. Access and Requests for Information

29. Nothing in this Second Amended Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facilities, 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.

VI. Severability

30. If any provision or authority of this Second Amended Order, or the application of this Second Amended Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Second Amended Order shall remain in full force and effect and shall not be affected by such a holding.

VII. Effective Date

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

VIII. Termination

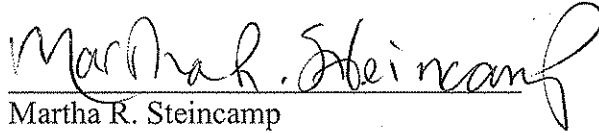
32. This Second Amended Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Second Amended Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 2nd day of July, 2008.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Martha R. Steincamp
Attorney

CERTIFICATE OF SERVICE

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

Jeffrey Theerman
Executive Director
Metropolitan St. Louis Sewer District
2350 Market Street
St. Louis, Missouri 63103-2555

Randy Hayman, Esq.
General Counsel
Metropolitan St. Louis Sewer District
2350 Market Street
St. Louis, Missouri 63103-2555

Susan Myers, Esq.
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2350 Market Street
St. Louis, Missouri 63103-2555

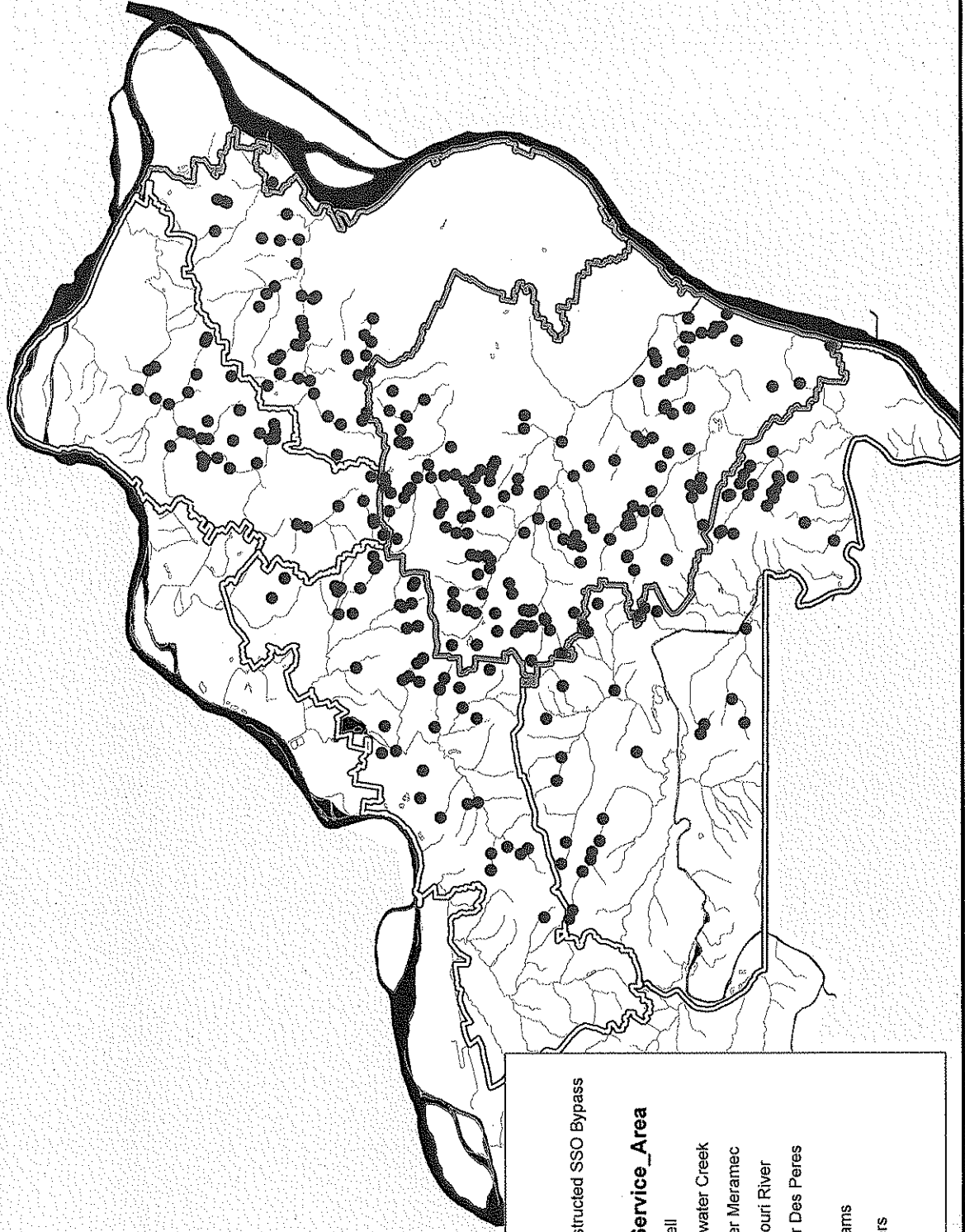
Terry Satterlee, Esq.
Shook Hardy & Bacon, LLP
2555 Grand Blvd.
Kansas City, Missouri 64108-2613

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

7/2/08
Date

Amy Gonzales

St Louis MSD Constructed SSOs: 305 Existing Locations



WARNING

DO NOT PLAY, SWIM, OR FISH



**Possible Sewage Overflow
Exposure to Water May Cause Illness**

**PLEASE REPORT FOUL ODORS, UNUSUAL DISCOLORATION,
OR
FLOW FROM OUTFALL DURING DRY WEATHER.**



**St. Louis
Metropolitan
Sewer District
(314) 768-6260**

Sign #

For detailed information visit: www.stlmsd.com