

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

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

Docket No. CWA-07-2006-0060

FINDINGS OF VIOLATION and
ORDER FOR COMPLIANCE

Background and Findings of Violation

Jurisdiction

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE are 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).

2. The EPA is alleging that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311 and Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

3. The Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA, Region VII, is the Director of Region VII's Water, Wetlands and Pesticides Division, EPA, Region VII.

4. Respondent, Central Jefferson County Utilities, Inc. (hereinafter referred to as "CJCU") privately owns and operates a Waste Water Treatment Facility ("WWTF") in the State of Missouri, which services homes in the Raintree Plantation Subdivision. The Missouri State Operating Permit is issued to Raintree Plantation and lists the owners as Central Jefferson County Utilities, Inc. Kenneth McClain and Jeremiah Nixon are the sole directors of both companies.

Statutory and Regulatory Framework

5. 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 National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

6. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. To implement Section 402 of the CWA, the 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.

8. 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 Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

9. Section 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

10. Pursuant to Sections 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1), the EPA promulgated the regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Parts 501 and 503. These regulations include record keeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

11. The State of Missouri has not yet been authorized to administer the Sludge Management Program. The EPA remains responsible for enforcement of the requirements of the Sludge Management Program until such a time as the State is authorized to administer the program in its entirety.

Findings of Fact

12. The CJCU is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The CJCU owns and operates a WWTF that receives and treats wastewater from various domestic sources.

14. The CJCU’s WWTF is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

15. The CJCU’s WWTF causes the “discharge of pollutants” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The CJCU’s WWTF generates “sewage sludge” that is used for “land application” on “agricultural land,” as those terms are defined by 40 C.F.R. §§ 503.9(w), 503.11(h) and 503.11(a), respectively.

17. The CJCU’s WWTF discharges pollutants into Galligher Creek. Galligher Creek is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

19. MDNR granted NPDES permit, No. MO-0099473 (“NPDES permit”), to the Respondent, effective July 2, 1999, and expiring July 1, 2004. Respondent timely submitted an application for the reissuance of the permit to MDNR on January 2, 2004. As of this date, the permit has not been reissued and is administratively extended.

20. On June 6 and 7, 2005, the EPA performed an inspection of the CJCU wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the inspection was: (1) a facility walk through and inspection of the wastewater treatment facilities; (2) a review of laboratory procedures, facility records and recordkeeping procedures; and (3) effluent sampling.

21. On numerous occasions since calendar year 2000, staff of MDNR have visited the CJCU and findings from many of their visits are referenced below.

Findings of Violation

22. The facts stated in paragraphs 12 through 21 above are herein incorporated.

Count I

23. Part C, 6. Water Quality Standards, of Respondent's permit includes the following general criteria for discharges from Outfall #001 to Galligher Creek:

- a. General criteria. The following water quality criteria shall be applicable to all waters of the state at all times including mixing zones. No water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting the following conditions:
 - (1) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses;
 - (2) Waters shall be free from oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses;
 - (3) Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses;
 - (4) Waters shall be free from substances or conditions in sufficient amounts to result in toxicity to human, animal or aquatic life;
 - (5) There shall be no significant human health hazard from incidental contact with the water;
 - (6) There shall be no acute toxicity to livestock or wildlife watering;
 - (7) Waters shall be free from physical, chemical or hydrological changes that would impair the natural and biological community; and

- (8) Waters shall be free from used tires, car bodies, appliances, demolition debris, used vehicles or equipment and solid waste as defined in Missouri's Solid Waste Law, section 260.200, RSMo, except as the use of such material is specifically permitted to pursuant to section 260.200-260.247.

24. During the EPA inspection described in paragraph 20, the discharge of activated sludge in extensive amounts from Outfall #001 to Galligher Creek was observed and caused at a minimum items 1, 3, and 7 above to be violated.

25. On July 7, 2003, February 9, September 1 and 7, November 18, 2004 and June 6 and 7, 2005, MDNR conducted an inspection of CJCU's WWTP and observed significant sludge deposits in Galligher Creek below the outfall, causing, at a minimum, violation of items 1, 3, and 7 above to be violated.

26. Discharging sludge that results in a reduction of water quality standards outlined in paragraph 23 is a violation of the terms and conditions of the NPDES permit for the CJCU and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count II

27. Part 1 of the Standard Conditions in Respondent's permit includes Section A, Monitoring and Reporting, which requires the following:

- a. Recording of Results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information: (i) the date, exact place, and time of sampling or measurements; (ii) the individual(s) who performed the sampling or measurements; (iii) the date(s) analyses were performed; (iv) the individual(s) who performed the analyses; (v) the analytical techniques or methods used; and (vi) the results of such analyses.

28. 40 C.F.R. § 122.41(j) sets forth the recording requirements for monitoring records, which are identical to those contained in Respondent's permit as Part I, Section A, as stated above.

29. Results from the EPA inspection described in paragraph 20 above indicated that Respondent did not record the information required by 40 C.F.R. § 122.41(j) and Part I, Section A of Respondent's permit.

30. Respondent's failure to record the required information is in violation of 40 C.F.R. § 122.41(j) and the terms and conditions of the NPDES permit for the CJCUC, and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count III

31. Standard conditions to the NPDES Permit, Part 1, Section A(7) requires all monitoring information be kept for at least three (3) years.

32. 40 C.F.R. § 122.41(j) sets forth the record keeping requirements for monitoring records, which are identical to those contained in Respondent's permit as Part I, Section A, as stated above.

33. During the EPA inspection described in paragraph 20 above, CJCUC asserted that the bench sheets (raw analytical data) for calendar year 2004 were lost in a computer hard drive failure and that no digital, magnetic or back-up had been made. The plant operator stated that bench sheets (raw analytical data) were generated for January, July, August, October and November 2004 but were discarded. The bench sheets were unavailable for all more recent months as well.

34. Respondent's failure to maintain the monitoring records is in violation of 40 C.F.R. § 122.41(j) and the terms and conditions of the NPDES permit for the CJCUC, and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count IV

35. Standard conditions to the NPDES Permit, Part 1, Section A(4) requires that test procedures meet 10 CSR 20-7.015.

36. 10 CSR 20-7.015(9)(A)2 states that analytical and sampling methods must conform to the methods in the references listed, which stipulates a 24-hour maximum holding time from the time of collection until sample analysis for biochemical oxygen demand determinations. The sample collected on April 30, 2005 was not analyzed until May 3, 2005. This is holding time of seventy-two (72) hours which is longer than allowed.

37. 10 CSR 20-7.015 stipulates a fifteen (15) minute holding time for samples to be analyzed for pH. Since January 2004, the pH analysis reported on the discharge monitoring reports has been performed by a commercial laboratory. The transport time from the WWTP to the commercial laboratory is about one hour which is four times the allowed period.

38. Respondent's failure to sample in accordance with the procedures codified at 10 CSR 20-7.015 is in violation of the terms and conditions of the NPDES permit for the CJCUC, and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count V

39. Standard conditions to the permit Part 1, Section A(1) requires that measurements taken as required by the permit be representative of nature and volume, respectively, of the monitored discharge.

40. The NPDES permit requires a flow measurement each weekday. The flow measurement device employed by the plant cannot measure flows that exceed 120,000 gallons per day. The operator reports the totalizer flow of the effluent measurement device, or 120,000 gallons. The operator stated that, based on winter potable water usage, the wastewater treatment plant flow is understated by approximately twenty-five (25) percent.

41. Respondent's failure to report flow measurements that are representative of actual plant flow is in violation of the terms and conditions of the NPDES permit for the CJCUC, and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count VI

42. Standard Conditions to the NPDES permit, Part 1, Section B(3) requires that operators or supervisors of operations at publicly owned or publicly regulated wastewater treatment facilities shall be certified in accordance with 10 CSR 20-9.020(2). The CJCUC WWTP requires a minimum of a "C" license operator to meet the code of state regulations.

43. Mr. Phibbs, the operator of the CJCUC WWTP, possessed a "D" license that expired in 2000.

44. Respondent's failure to operate the WWTP in accordance with the rules governing operator license is in violation of the terms and conditions of the NPDES permit for the CJCUC, and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count VII

45. The NPDES permit for CJCUC states that the design flow for the plant is 64,000 gallons per day and that the design population equivalent is 636.

46. Discharge Monitoring Reports (hereinafter "DMRs") submitted to MDNR for calendar year 2004 indicate the flow of wastewater into the WWTF averaged 94,909 gallons per day which is forty-eight percent (48%) over the daily design flow. Furthermore, DMRs submitted to MDNR indicate that the flow of wastewater during wet weather conditions consistently exceeds 120,000 gallons per day, which is the measuring capacity of the existing flow meter.

47. The CJCU's chronic operation of the WWTF beyond the permitted design flow is in violation of the terms and conditions of the NPDES permit for CJCU and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count VIII

48. Standard Conditions Part III, Section K, Record Keeping and Reporting Requirements of Respondent's permit include the requirement of filing of an annual sludge report by January 28th of each year that covers sludge monitoring and disposal information for the previous calendar year.

49. Results from the EPA inspection described in paragraph 20 above indicated that Respondent has not submitted an annual sludge report to the MDNR for the five years previous to the inspection.

50. Standard Conditions Part III Section K(5) of the NPDES permit itemizes the information that must be contained in the annual sludge report. The information includes the volume of sludge in gallons and percent solids, metal and nutrient content of the sludge, disposal site information relative to sludge application, soil nutrient content and application rates, vector attraction reduction information and pathogen reduction information.

51. None of the information required to be kept for inclusion in the annual report was available for the five (5) years prior to the inspection described in paragraph 20.

52. Respondent's failure to submit annual reports and keep the records necessary to complete the annual report and demonstrate compliance with 40 C.F.R. Part 503 is in violation of 40 C.F.R. Part 503 and of the terms and conditions of the NPDES permit for the CJCU, and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

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 in paragraphs 1 through 6.

1. Within thirty (30) days of receipt of this Order, Respondent shall provide to the EPA and MDNR a Remediation and Monitoring Plan (hereinafter R & M Plan) for Galligher Creek for review and approval. The Plan shall fully address the impacts that Respondent's illegal sludge discharges have had on Galligher Creek, and shall provide for complete restoration of Galligher Creek. The R & M Plan shall include documentation of any past clean up and removal of sludge from Galligher Creek, including but not limited to photos, documentation of clean up and removal procedures, volume calculations and records, and cost of sludge removal, and shall also provide a detailed plan and schedule for any additional remediation and monitoring actions that are necessary. Upon EPA approval of the R & M Plan, Respondent shall fully implement the plan in accordance with the schedule therein.

2. All new sewer connections to the WWTP are prohibited unless and until a professional engineer registered and in good standing in the State of Missouri certifies in advance that the new connection to the sewage collection system will not result in the wastewater treatment plant exceeding its existing design average daily hydraulic treatment capacity limit of 64,000 gallons per day.

3. By the tenth day of the following month, beginning , and continuing until six (6) months after the CJCU new wastewater system has been completed and is in operation and compliance with the conditions of Respondent's NPDES permit has been attained for six (6) consecutive months subsequent to the operation of the CJCU new wastewater system, the Respondent shall provide a monthly report of any new sewer connections during that period, describing the nature, location, and estimated flow volume of the new sewer connection or extension. The reports shall include copies of any professional engineer certifications of capacity obtained by CJCU pursuant to paragraph 2 above.

4. Within five (5) days of the receipt of this Order, the Respondent shall:

- a. procure and install a flow meter capable of correctly monitoring actual inflow of wastewater into the WWTF at all times, including during peak wet weather flows, and send a certification to EPA that the meter is calibrated and accurately measuring flow;
- b. comply with the requirements of Part 1, Section A of Standard Conditions of Respondent's NPDES permit, which requires proper recordkeeping procedures for all measurements or samples taken pursuant to the requirements of Respondent's NPDES permit number; and
- c. comply with the reporting requirements pursuant to 40 C.F.R. § 503 and the terms and conditions of Part III of the Standard Conditions of

Respondent's NPDES permit, which requires the proper management of sludge and biosolids from the CJCUC's WWTF.

5. Within thirty (30) days after the completion of the requirements of paragraphs 1 through 4 of this Consent Order for Compliance, Respondent shall provide a written statement signed by a principal executive officer or a ranking elected official to the EPA, Region VII. The statement shall contain the following certification:

I certify under penalty of law that the Central Jefferson County Utilities, Inc. has complied with all the applicable requirements of the Consent Order for Compliance. I also certify 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.

6. Within thirty (30) days of receipt of this Order, Respondent shall submit to the EPA for review and approval, with a copy to MDNR, a work plan (Work Plan) containing the following elements for compliance with 40 C.F.R. Part 503:

- a. a plan, including a schedule complete with dates and milestones, for achieving and maintaining compliance with all provisions of 40 C.F.R. Part 503, including but not limited to performing all necessary monitoring, maintaining all records, and demonstrating that all the land applied sludge meets the requirements of 40 C.F.R. Part 503.

Submissions

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

Cynthia Sans
Environmental Protection Specialist
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

8. A copy of documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Mohamad Alhalabi, Regional Director
St. Louis Regional Office
Missouri Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, Missouri 63125.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

9. 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 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.

10. 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 the 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

11. Nothing in this Order shall limit the 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.

In the Matter of:
Central Jefferson County Utilities, Inc.
Compliance Order

Severability

12. 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

13. This Final 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 Final Order.

Issued this 30th day of November, 2005.



Leo J. Alderman
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101



Anne E. Rauch
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

In the Matter of:
Central Jefferson County Utilities, Inc.
Compliance Order

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:

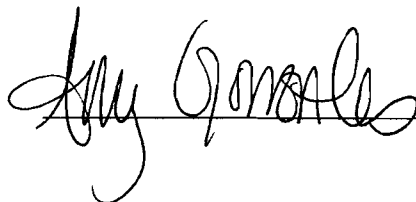
Kenneth McClain
Jeremiah Nixon
1519 McNutt Road
Herculaneum, Missouri 63048

Mr. Daniel Schuette, Director
Division of Environmental Quality
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Mohamad Alhalabi, Regional Director
St. Louis Regional Office
Missouri Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, Missouri 63125.

12/1/05
Date



Amy Gonzalez