

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

IN THE MATTER OF )  
 ) Docket No. CWA-07-2015-0106  
The City of Albany, Missouri )  
 )  
Respondent. ) ADMINISTRATIVE ORDER  
 ) FOR COMPLIANCE ON CONSENT  
Proceedings under Section 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3) )  
\_\_\_\_\_ )

**I. Preliminary Statement**

1. This Administrative Order for Compliance on Consent (“Order on Consent”) is issued by the U.S. Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent, the City of Albany, Missouri (“Respondent” or “the City”), is and was at all relevant times a municipality organized under the laws of the State of Missouri.

3. The EPA, together with the Respondent (hereafter collectively referred to as the “Parties”) enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent through entering into this Order to address alleged noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent; (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent; and (3) consents to be bound by the requirements set forth herein. Respondent also

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 on Consent, 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 or legal conclusions asserted by the EPA set forth in this Order on Consent.

## II. General Allegations

7. 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 in accordance with the terms of a NPDES permit issued pursuant to that Section.

8. 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.

9. The Missouri Department of Natural Resources (“MDNR”) is the state agency within the State of Missouri that has been authorized by EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

10. The City of Albany, Missouri (hereafter “City” or “Respondent”), is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant, Respondent was, and still is, the owner and/or operator of a Publicly Owned Treatment Works (“POTW”) in Gentry County, Missouri, that includes a wastewater treatment plant (“WWTP”) and sewage collection system, which receive wastewater from various domestic and non-domestic sources. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

12. The POTW discharges to Town Branch in Gentry County, Missouri, and thereafter to the East Fork Grand River. Town Branch and the East Fork Grand River are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2, and 33 C.F.R. Part 328. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, *inter alia*, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce (hereinafter “traditional navigable waters”) and tributaries of such waters. 40 C.F.R. § 122.2.

13. Town Branch and the East Fork Grand River each have a bed, banks, and an ordinary high water mark and have been identified as perennial streams by the U.S. Geological Survey. Town Branch is a tributary of the traditionally navigable East Fork Grand River, and both are a water of the United States, as defined in 40 C.F.R. § 122.2.

14. The City's POTW is a "point source" that "discharges pollutants" to "navigable water" of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

15. On or about December 14, 2007, MDNR issued NPDES Permit No. MO-0021466 which was amended on April 11, 2008, expired December 13, 2012, and was administratively extended ("Old Permit"). On or about November 1, 2014, MDNR re-issued NPDES Permit No. MO-0021466 ("Current Permit") to Respondent pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Current Permit expires on March 31, 2017.

16. On February 5, 2008, EPA performed an inspection of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "EPA's inspection"). EPA's inspector reviewed the POTW's compliance and found that non-compliance with the NPDES permit's limits for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) had continued through 2007. EPA's inspector also documented observations of the operation of City's POTW and performed sampling of the POTW's discharge.

17. Based on the findings from the EPA's Inspection and other relevant information, on or about December 19, 2008, EPA issued a Findings of Violation and Order for Compliance ("2008 Order") to the City pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Docket No. CWA-07-2008-0011. The 2008 Order required the City to correct the deficiencies and eliminate and prevent recurrence of the violations, and comply with all applicable requirements of its Permit. Actions proposed by Respondent pursuant to the 2008 Order to address violations of the Old Permit were completed by Respondent in September 2010. EPA terminated the 2008 Order on May 27, 2015. However, the City has remained in non-compliance with the Current Permit as alleged below.

### **III. EPA's Findings of Violations**

18. The facts stated in Paragraphs 7 through 17 above, are hereby incorporated by reference.

19. Based on EPA's review of relevant information, including copies of Monthly Monitoring Reports ("MMRs") covering the period thru issuance of this Order and submitted by the City to the MDNR pursuant to the Current Permit, the City has continued to violate its permitted effluent limitations set forth in Table A-1 (Interim Effluent Limitations and Monitoring Requirements) of the Current Permit, during the months identified below:

- a. BOD<sub>5</sub> 30-day average concentration limit of 30 mg/L:  
2014 – November  
2015– January, February, May, June
- b. BOD<sub>5</sub> 7-day average concentration limit of 45 mg/L:  
2015– February, May (twice), June
- c. TSS 30-day average concentration limit of 60 mg/L:  
2015– May, June
- d. TSS 7-day average concentration limit of 80 mg/L:  
2015 – May (twice)

20. Based on EPA’s review of relevant information, including copies of Monthly Monitoring Reports (“MMRs”) covering the period thru issuance of this Order and submitted by the City to the MDNR pursuant to the Current Permit, the City has continued to violate its permitted effluent limitations set forth in Table B (Influent Monitoring Requirements) of the Current Permit, during the months identified below:

- a. BOD<sub>5</sub> 65% removal:  
2015 – May, June
- b. TSS 65% removal:  
2014 – November, December  
2015 – May, June

21. Respondent’s violations identified in Paragraphs 19 and 20. above, are violations of the requirements of the City’s Current Permit, and as such are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

#### **IV. Order for Compliance**

22. Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED and Respondent hereby CONSENTS to take the actions described below.

23. Immediately upon receipt of this Order, Respondent shall take whatever actions are necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all the applicable requirements of its Current Permit.

24. *Schedule for Compliance* – By no later than sixty (60) days following receipt of this order. Respondent shall submit to EPA, for review and approval, with a copy to MDNR. a

detailed Schedule for Compliance (“Schedule”) with interim and final action items as set forth in Paragraph 25 below, to be taken by the City to comply with all terms, limitations and conditions of its Current Permit.

25. The Schedule shall, at a minimum, include a detailed plan and schedule for correction of the deficiencies, modification of operation and maintenance procedures, installation of equipment and/or construction of new facilities to ensure all discharges from the City’s POTW comply with the secondary treatment standards and water quality-based limitations in the City’s applicable NPDES Permit in effect at the time of receipt of this order. The schedule for implementing any proposed modification(s) must include interim milestones to be reported on an annual basis, unless noted otherwise below, and shall in no event exceed the deadlines set forth below:

- a. By no later than sixty (60) days following receipt of this order, Respondent shall submit a detailed Schedule, for review and approval by EPA pursuant to Paragraph 26, and shall identify one or more City personnel, with contact information, for purposes of communications regarding this Order;
- b. The detailed Schedule shall provide for correcting all deficiencies and meeting all applicable NPDES permit limitations as expeditiously as possible, but in no case later than March 31, 2019; and
- c. The detailed Schedule shall comply, in general, with the schedule provided to the EPA as an attachment to an email from the City Administrator dated August 13, 2015, for the engineering and construction of any facilities identified by the City as necessary to comply with the terms of this order.

26. *Approval of Schedule and Implementation* – Upon receipt, the EPA will review the Schedule submitted by the City and, after consultation with the MDNR, shall approve the Schedule or require modification and resubmission of portions or all of such submittals pursuant to Paragraph 27, below. Upon written approval by the EPA, the City shall implement the provisions of the Schedule as a condition of compliance with this Order.

27. *Modifications* – If required by the EPA pursuant to Paragraph 26, above, the City shall within forty-five (45) days of receipt of any written comments from the EPA regarding the Schedule, make modifications and changes to it as directed by the EPA, and resubmit the Schedule to the EPA, with a copy to the MDNR. Upon written request, the EPA may grant a longer period of time for resubmission of such documents.

28. The City shall at all times comply with requirements established by the State of Missouri and the MDNR regarding 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.

### Semiannual Reporting

29. Beginning April 28, 2016, Respondent shall submit semiannual reports (by no later than April 28 and October 28 each year) to EPA, with a copy to MDNR, until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 40, below, that describe the actions taken by the City to comply with the terms of this Order. The semiannual reports shall include, at a minimum, the following information:

- a. *Progress Report* – a description, with dates, of activities completed under this Order within the reporting period, including a clear statement as to whether each item identified in the Schedule was completed on time and successfully, and the results achieved;
- b. *Anticipated Actions* – a brief list of the activities planned to comply with the terms of this Order during the next semiannual reporting period and a statement as to whether any delays are expected, and if so, an explanation of the reason for the delay, the anticipated length of delay and the actions the City is taking to remain on schedule (*Note*: a delay in completing any item under the Schedule does not relieve the City of the responsibility to meet the final compliance date under the Schedule, which may be extended only upon written consent by the EPA, after consultation with the MDNR); and
- c. *MMRs* – submit to the EPA a copy of the signed MMRs for the previous six-month reporting period (*Note*: as required by the Permit, the Respondent must submit the original signed MMRs to the MDNR on a monthly basis).

30. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks included in the Schedule required by Paragraphs 24 and 25. above. to achieve compliance with the 2014 Permit (Current Permit). EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within five (5) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA review and approval a proposed schedule and tasks for completion of any additional work. Such proposed schedule and tasks shall be submitted within sixty (60) days of Respondent's receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a schedule for any such additional work, Respondent shall perform the specified tasks in accordance with the schedule and provisions contained therein.

### Certification

31. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

*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.*

### **Submittals**

32. All documents required to be submitted to the EPA by this Order, shall, whenever possible, be submitted electronically to:

[dillard.wayne@epa.gov](mailto:dillard.wayne@epa.gov)

Documents that cannot be submitted electronically shall be submitted to:

Wayne Dillard, P.E., or his successor  
Environmental Engineer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

33. A copy of each submittal to EPA shall be delivered to MDNR, as follows:

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

## **V. General Provisions**

### **Effect of Compliance with the Terms of This Order for Compliance**

34. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.



35. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

36. 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 Section 309 of the Act, 33 U.S.C. § 1319, 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**

37. 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**

38. 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**

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



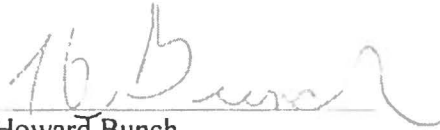
**Termination**

40. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 29<sup>th</sup> day of October, 2015.



Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division



Howard Bunch  
Senior Assistant Regional Counsel  
Office of Regional Counsel

For the Respondent, City of Albany, Missouri

Wendy Preston  
Signature

October 20, 2015  
Date

Wendy Preston  
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 Order for Compliance to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

The Honorable Wendy Preston  
Mayor, City of Albany  
106 East Clay Street  
Albany, Missouri 64402.

I further certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

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

11-2-15  
Date



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