

7. The City's POTW discharges to an unnamed tributary of Boone Creek, which thereafter flows to Boone Creek.

8. The POTW is a "point source" that "discharges pollutants" into "navigable waters" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

10. On or about August 4, 2006, MDNR granted NPDES permit No. MO-0094765 (hereafter "NPDES permit"), to the Respondent for discharges from the POTW to Boone Creek, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of August 3, 2011.

11. Section A of Respondent's NPDES permit sets weekly average and monthly average final effluent limitations for Five-day Biological Oxygen Demand (BOD₅) and Total Suspended Solids (TSS), and requires monitoring for these parameters at least once per month using a composite sample made up of a minimum of four grab samples collected within a 24-hour period, with a minimum of two hours between each grab sample.

12. Section B of Respondent's NPDES permit incorporates by reference Standard Conditions Parts I, II and III. Included within Part I of the Standard Conditions of the City's NPDES permit are the following provisions:

- a. Section A.4 requires that test procedures for the analysis of pollutants shall be in accordance with Missouri Clean Water Commission Effluent Regulations 10 CSR 20-7015, which references EPA's *Standard Methods for the Examination of Waters and Wastewaters*.
- b. Section A.5(a) requires the permittee to maintain a record of the date, exact place and time of sampling or measurements, the individual(s) who performed the sampling measurements, the date(s) analyses was performed; the individual(s) who performed the analyses, the analytical techniques or methods used; and the results of such analyses.
- c. Section B.2 requires reporting to MDNR within five (5) days of any failure to comply with the daily maximum effluent limitations of the NPDES permit, and within 24 hours of any noncompliance with the permit that may endanger health or the environment.
- d. Section B.3 requires the permittee to operate and maintain the POTW facilities to comply with the Missouri Clean Water Law and applicable permit conditions, and further requires the permittee to be able to demonstrate that wastewater treatment equipment and facilities are effectively operated and maintained by competent

personnel. Missouri regulations promulgated under the Missouri Clean Water Law include, among other provision, 10 CSR 20-9.010(5)(B)2, which requires weekly sampling of non-filterable solids (also know as suspended solids) for wastewater activated sludge processes.

- e. Section B.6 requires that solids, sludges and other pollutants removed in the course of treatment or control of wastewater to be disposed of in a manner to prevent them from entering surface water.

13. Section C of Respondent's NPDES permit identifies Special Conditions that are applicable to the City, including the following provisions:

- a. Section C.2 requires that all outfalls must be clearly marked in the field.
- b. Section C.6(a) requires that water 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.

14. On March 5-8, 2007, the EPA performed an inspection (hereafter "the EPA Inspection") of the City of Bourbon wastewater treatment facility 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.

15. During the Inspection, the EPA inspector made observations and documented his findings regarding the City's compliance with effluent sampling, analysis, reporting and recordkeeping requirements, as follows:

- a. The City did not preserve the oil, grease and ammonia samples with acid when cooled overnight;
- b. The City did not keep a record for samples collected at the Bourbon POTW of the date, time and exact place of sampling or measurement and the individual(s) who performed the sampling measurements, nor did the City keep a record of the name of the individual(s) who performed the analyses and the analytical techniques or methods used for the pH determinations performed at the Bourbon POTW.
- c. The City's POTW experienced one or more sanitary sewer overflow (SSO) events in the collection system in 2005, including one probable event in December 2006, however no SSO events were reported to the MDNR until after the EPA Inspection.

16. During the Inspection, the EPA inspector made observations and documented his findings for the City's wastewater treatment processes, its operation and maintenance, the discharge point, and the receiving stream, as follows:

- a. The City uses an activated sludge wastewater treatment process. At the time of the Inspection, there was a high solids blanket in the clarifier. The EPA inspector was told by City personnel that the stormwater clarifier had generally not been utilized to reduce flow overloads to the activated sludge portion of the plant during high flow events.
- b. Records maintained by the City of Bourbon indicate that mixed liquor suspended solids and settleability were only calculated once or twice per month from December 2005 through December 2006.
- c. Respondent's Outfall 001 was unmarked.
- d. Bottom deposits of sludge were observed in the unnamed tributary to Boone Creek at the POTW's Outfall 001 discharge point and for about 80 feet downstream from that point.
- e. Based on information gathered and analyzed during the Inspection, the EPA inspector surmised that the City's failure to properly operate and maintain the City's wastewater treatment plant, through lack of use of the stormwater clarifier for storm event flows and infrequent calculation and management of the mixed liquor suspended solids and settleability in the waste activated sludge system, has resulted in discharges of solids from the POTW.

IV. Findings of Violation

17. The facts stated in Paragraphs 4 through 16 above are herein incorporated.
18. Respondent violated Section B, Part I, Subsection A.4 of the NPDES by failing to preserve oil, grease and ammonia samples as required by 10 CSR 20-7015 and EPA's *Standard Methods for Examination of Water and Wastewater*.
19. Respondent violated Section B, Part I, Subsection A.5(a) of the NPDES permit by failing to maintain appropriate records for sampling and analysis events.
20. Respondent violated Section B, Part I, Subsection B.2 of the NPDES permit by failing to report within five days a SSO event that occurred in December 2006.
21. Respondent violated Section C.2 of the NPDES permit by failing to mark Outfall 001 in the field.
22. Respondent violated Section B, Part I, Subsections B.3 and B.6, and Section C.6(a) of the NPDES permit by failing to operate and maintain the POTW facilities to comply with the permit conditions, including but not limited to, failure to perform weekly sampling of suspended solids, as required by 10 CSR 20-9.010(5)(B)2, failure to ensure solids removed in the course of

treatment or control of wastewater were disposed of in a manner to prevent them from entering surface water, and failure to ensure the POTW did not discharge to surface waters substances in sufficient amounts to cause the formation of unsightly or harmful bottom deposits.

23. Respondent's violations of the terms and conditions of its NPDES permit, as described in Paragraphs 17 through 22, above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

V. 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.

24. *Stream Clean-up.* Respondent shall take the following actions to remove sludge or solids deposits in the unnamed tributary of Boone Creek, and also in Boone Creek if present, resulting from discharges from the POTW:

- a. Within fourteen (14) days of receipt of this Order, consult with state, local, and as appropriate, federal officials regarding the nature and extent of sludge or solids deposits at and downstream of the POTW outfall in the unnamed tributary to Boone Creek, and determine an appropriate course of action for removing or otherwise treating, the sludge or solids deposits. The City shall document all contacts with state, local and federal officials, and obtain, where necessary, approvals, permits or other applicable authorizations. The requirements of this Order do not supersede Respondent's responsibility to comply with other federal, state or local requirements, such as regulations administered by the US Corps of Engineers regarding dredge, fill or construction activities in water of the United States.
- b. Within thirty (30) days of receipt of this Order, remove all sludge or solids deposits from the unnamed tributary, where possible, and otherwise treat areas of sludge or solids deposit that are not amenable to removal. These activities shall be executed in a manner consistent with advise provided, and authorizations given, by state, local and federal agencies, as described in subparagraph a, above. All activities under this Paragraph shall be fully documented, including the use of photographs before during and after such activities. If additional time is needed to obtain applicable authorizations before implementing the removal or treatment actions, the City shall within the thirty (30) day period, submit a written request for an extension of time to Kimberly Harbour, EPA, at the address indicated in Paragraph 29 below.

- c. All removed materials shall be disposed of or otherwise managed in a manner consistent with Respondent's NPDES permit, the CWA and its implementing regulations, including the regulations for management of biosolids at 40 CFR Part 503, and any other applicable state, local or federal requirements.
 - d. Within sixty (60) days of receipt of this Order, submit a detailed description of the actions taken to comply with the specific requirements of subparagraphs a through c, above. The report shall include a summary of all work performed; contacts with state, local or federal agencies, including a description of any work performed at the direction of or after consultation with such agencies; and all sampling and analysis results, photos, documentation of clean up and removal procedures, disposal actions, volume calculations and records, and cost of such activities. If the City, in consultation with state, local and federal officials, determines that removal or treatment of the sludge or solids deposits is not necessary or appropriate, the City shall include in its report a full discussion of the basis for that determination and photographic and other appropriate evidence to support that decision.
25. *Sampling, Analysis, Recordkeeping, and Reporting.* Beginning immediately upon receipt of this Order, the City shall comply with all sampling, analysis, recordkeeping and reporting requirements of its NPDES permit, including but not limited to the following:
- a. Properly conduct sampling and analysis for all parameters specified in the NPDES permit, including but not limited to, collection of composite samples for BOD₅ and TSS in accordance with Section A of the City's NPDES permit, and preservation of oil and grease and ammonia samples in accordance with Part I, Section A.4 of the City's NPDES permit.
 - b. Record all data required to be documented when sampling and analyzing samples, including but not limited to date, time and exact place of sampling or measurement, the individual(s) who performed the sampling measurement, the individual(s) who performed the analyses and the analytical techniques or methods used for all samples, in accordance with Part I, Section B.5(a) of the City's NPDES permit.
 - c. Report all Sanitary Sewer Overflows to the MDNR as specified by the NPDES permit, including discharges that have not already been submitted to the MDNR since the date of the EPA inspection and future occurrences, in accordance with Part I, Section B.2 of the City's NPDES permit.
 - d. Perform sampling and analysis necessary to determine mixed liquor suspended solids and settleability for activated sludge processes and modifications on a weekly basis, as required by Part I, Section B.6 of the City's NPDES permit.

26. *POTW Operation and Maintenance.* Within sixty (60) days of receipt of this Order, Respondent shall provide a report to EPA demonstrating that it has taken actions and instituted practices necessary to operate and maintain its POTW in a manner consistent with its NPDES permit, the CWA and its implementing regulations, and applicable state requirements. The report shall demonstrate that at least the following actions have been taken:

- a. Implementation of required sampling, analysis, recordkeeping and reporting practices, as identified in Paragraph 25 of this Order, above.
- b. Development and implementation of written procedures and policies to ensure proper operation and maintenance of the wastewater treatment plant, including but not limited to, procedures that would prevent future unintentional discharges from the POTW, a plan to address the activated sludge process and management of the waste activated sludge, a plan that provides guidance as to when the stormwater clarifier should be used and how wastewater surges greater than average daily flow shall be managed. In developing these procedures and policies, the City shall consult with qualified professionals, as well as appropriate state officials.

27. *Precipitation Event Monitoring and Reporting.* For a period of twelve months following receipt of this Order, Respondent shall sample, analyze and report BOD₅ and TSS in its effluent discharges, as described below, in addition to the sampling, analysis and reporting required by its NPDES permit:

- a. Using the sampling and analysis techniques required by the NPDES permit, sample BOD₅ and TSS on the first day of each discharge event that exceeds the POTW's design flow identified in the NPDES permit (240,000 gallons per day), and also sample BOD₅ and TSS on the third day of any period during which the discharge event continues to exceed the POTW's design flow.
- b. The results of all sampling and analysis required under this Paragraph shall be included in the City's Discharge Monitoring Reports, as required by Part I, Section A.6 of the NPDES permit, and used for determining compliance with NPDES permit limitations.
- c. Submit a copy of each monthly Discharge Monitoring Report to Kimberly Harbour, EPA, at the address identified in Paragraph 29, below, at the same time the Discharge Monitoring Report is submitted to MDNR.

28. *Certification.* Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contain the following certification:

I also 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 violations.

Submissions

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

Kimberly Harbour
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

30. 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

Gary Gaines, Director
Southeast Regional Office
Missouri Department of Natural Resources
2155 N. Westwood Blvd.
Poplar Bluff, Missouri 63901.

VI. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

31. 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 correct the violations described above, including but not limited to actions to protect the health or welfare of persons or the environment, or 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.

32. 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

33. 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.

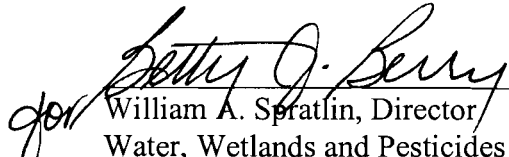
Severability

34. 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

35. This Order shall be effective upon receipt by Respondent. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Issued this 13th day of September, 2007.


for _____

William A. Spratlin, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101



Patricia Gillispie Miller
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

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:

The Honorable Leonard Armstrong
Mayor, City of Bourbon
P.O. Box 164
Bourbon, Missouri 65441;

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

Gary Gaines, Director
Southeast Regional Office
Missouri Department of Natural Resources
2155 N. Westwood Blvd.
Poplar Bluff, Missouri 63901.

9/14/07
Date

