

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:) FINDINGS OF VIOLATION AND
) ORDER FOR COMPLIANCE
City of Farmington, Missouri)
)
A Municipality)
) Docket No. CWA-07-2010-0044
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. 1319(a)(3))
)

Background and Findings of Violation

Jurisdiction

1. The FINDINGS OF VIOLATION are made and the 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"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. EPA is alleging that the City of Farmington, Missouri discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

3. The Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA Region 7, is the Director of Region 7's Water, Wetlands, and Pesticides Division.

4. Respondent, the City of Farmington, Missouri (hereafter "Respondent" or "Farmington"), operates a Publicly Owned Treatment Works ("POTW") in the State of Missouri ("Missouri") that treats domestic, commercial, and industrial wastewater.

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

9. Section 405(d)(1) of the CWA, 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 CWA, 33 U.S.C. 1345(d)(1), 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. 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 Missouri is authorized to administer the program in its entirety.

Findings of Fact

12. Farmington is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Farmington's POTW 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.

14. Farmington's POTW discharges to an unnamed tributary to the St. Francois River and the Kennedy Branch of Wolf Creek.

15. 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.

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

17. On May 5, 2006, MDNR granted NPDES permit No. MO-0040312, (hereafter "West WWTP NPDES permit"), to the Respondent for discharges from the Farmington West Wastewater Treatment Plant ("West WWTP") to an unnamed tributary to the St. Francois River, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit was revised June 16, 2006, and has an expiration date of May 4, 2011.

18. On December 16, 2005, MDNR granted NPDES permit No. MO-0028860, (hereafter "East WWTP NPDES permit"), to the Respondent for discharges from the Farmington East Wastewater Treatment Plant ("East WWTP") to the Kennedy Branch of Wolf Creek, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of December 15, 2010.

19. 40 C.F.R. Part 503.13 sets forth that bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for any pollutant as it is set forth in Table 1 of the same Part.

20. Table 1 of 40 C.F.R. Part 503.13, sets forth a ceiling concentration for Nickel of 420 milligrams per kilograms ("mg/kg") on a dry weight basis.

21. Part III.A of the August 15, 1994 Standard Conditions for NPDES Permits Issued by the MDNR Missouri Clean Water Commission, incorporates by reference all applicable federal sludge disposal regulations under 40 C.F.R. Part 503.

22. Part A. Effluent Limitations and Monitoring Requirements of Respondent's West WWTP NPDES permit includes the following limits for discharges from outfall #001 to the unnamed tributary of the St. Francois River, effective upon issuance:

- a. Ammonia as Nitrogen ("Ammonia as N") shall be limited to a daily maximum of 3.4 micrograms per liter ("mg/L") and a monthly average of 1.7 mg/L seasonally from May 1 through October 31. Additionally, Ammonia as N shall be limited seasonally from November 1 through April 30 to a daily maximum of 4.0 mg/L and a monthly average of 2.0 mg/L.

23. Part A. Effluent Limitations and Monitoring Requirements of Respondent's East WWTP NPDES permit includes the following limits for discharges from outfall #001 to the Kennedy Branch of Wolf Creek, effective upon issuance:

- a. Ammonia as N shall be limited to a daily maximum of 1.6 mg/L and a monthly average of 0.8 mg/L seasonally from May 1 through October 31. Additionally, Ammonia as N shall be limited seasonally from November 1 through April 30 to a daily maximum of 2.8 mg/L and a monthly average of 1.4 mg/L.

24. On January 26 through January 30, 2009, EPA performed an inspection of the Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "Inspection").

25. During the Inspection, the EPA inspector conducted a walk through of Respondent's West and East WWTPs, conducted a sampling inspection of each of the WWTPs outfalls, and collected additional information regarding the collection system and operation and maintenance programs. The EPA inspector documented his findings regarding Farmington's compliance with its NPDES permits and the CWA, as follows:

- a. Based on a review of Respondent's annual sludge reports, sewer sludge was applied to the land in concentrations exceeding the ceiling concentration for Nickel of 420 mg/kg, as set forth below:

Date of Sample	Date(s) of Land Application	Nickel Concentration	Percent Over Ceiling Concentration	
June 5, 2006	June 2006	5 th , 6 th , 7 th , 8 th , 9 th , 12 th , 13 th , 14 th , 15 th , 19 th , 20 th , 21 st , 22 nd , 23 rd , 26 th , 27 th , 28 th , and 29 th	427.90 mg/kg	1.9%
	July 2006	3 rd , 5 th , 6 th , 7 th , 10 th , 11 th , 13 th , 17 th , 18 th , 19 th , 20 th , 21 st , 24 th , 25 th , 26 th , and 27 th		
	August 2006	1 st , 2 nd , 3 rd , 4 th , 7 th , 8 th , 9 th , 12 th , 13 th , 16 th , 17 th , 18 th , 21 st , 22 nd , 23 rd , 24 th , 30 th , and 31 st		
	September 2006	1 st , 5 th , 6 th , 7 th , 8 th , 11 th , 12 th , 13 th , 14 th , 15 th , 19 th , 20 th , 21 st , 26 th , 27 th , 28 th , and 29 th		
	October 2006	2 nd , 3 rd , 4 th , 5 th , 6 th , 9 th , 10 th , 11 th , 12 th , 13 th , and 18 th		
October 20, 2006	October 2006	20 th , 23 rd , 24 th , 25 th , and 30 th	772.33 mg/kg	83.9%
	November 2006	2 nd , 3 rd , 6 th , 8 th , 9 th , 20 th , and 21 st		
November 22, 2006	November 2006	22 nd , 27 th , 28 th , and 29 th	801.71 mg/kg	90.9%
	December 2006	6 th , 7 th , and 8 th		
	January 2007	None		
	February 2007	6 th , 7 th , 8 th , 9 th , 12 th , 13 th , 14 th , and 15 th		
February 20, 2007	February 2007	20 th , 22 nd , 23 rd , 26 th , 27 th , and 28 th	1406.62 mg/kg	234.9%

	March 2007	5 th , 6 th , 7 th , 8 th , 9 th , 12 th , 13 th , 14 th , 15 th , 16 th , 19 th , 20 th , 21 st , 23 rd , 27 th , 28 th , 29 th , and 30 th		
	April 2007	2 nd , 3 rd , 4 th , 5 th , 6 th , 16 th , 17 th , 18 th , 19 th , 20 th , 23 rd , 24 th , 25 th , and 26 th		
	May 2007	1 st , 2 nd , 3 rd , 7 th , 8 th , 9 th , 10 th , 11 th , 14 th , 15 th , 16 th , 17 th , 18 th , 21 st , 22 nd , 23 rd , 24 th , 25 th , 29 th , 30 th , and 31 st		
	June 2007	1 st , 4 th , 5 th , 7 th , 11 th , 12 th , 13 th , 14 th , 15 th , 18 th , 19 th , 20 th , 21 st , 25 th , 27 th , 28 th , and 29 th		
	July 2007	9 th , 10 th , 12 th , 13 th , 16 th , 17 th , 18 th , 19 th , 23 rd , 24 th , 26 th , 27 th , 30 th , and 31 st		
August 1, 2007	August 1, 2007	1 st , 7 th , 8 th , 9 th , 13 th , 14 th , 15 th , 20 th , 21 st , 22 nd , 23 rd , 24 th , 27 th , 28 th , and 30 th	3027.09 mg/kg	620.7%
	September 2007	10 th , 11 th , 13 th , 17 th , 18 th , 19 th , 20 th , 21 st , 24 th , 25 th , 26 th , 27 th , and 28 th		
	October 2007	1 st , 2 nd , 3 rd , 4 th , 5 th , 8 th , 9 th , 10 th , 11 th , 16 th , 18 th , 19 th , 22 nd , 29 th , 30 th , and 31 st		
	November 2007	1 st , 2 nd , 5 th , 6 th , 7 th , 8 th , 9 th , 10 th , 11 th , 16 th , 18 th , 19 th , 22 nd , and 29 th		
November 30, 2007	November 2007	30 th	3741.50 mg/kg	790.8%
	December 2007	None		
	January 2008	2 nd , 3 rd , 4 th , 7 th , 8 th , 9 th , 10 th , 11 th , 14 th , 15 th , 17 th , 18 th , 21 st , 22 nd , 23 rd , 24 th , 25 th , 28 th , 29 th , 30 th , and 31 st		
February 20, 2008	February 2008	None	1929.57 mg/kg	359.4%
	March 2008	26 th and 27 th		
	April 2008	29 th and 30 th		

	May 2008	1 st , 5 th , 6 th , 7 th , 8 th , 9 th , 12 th , and 13 th		
May 15, 2008	May 2008	15 th , 16 th , 19 th , 20 th , 21 st , 22 nd , 23 rd , 28 th , 29 th , and 30 th	666.22 mg/kg	58.6%
	June 2008	2 nd , 9 th , 10 th , 11 th , 12 th , 13 th , 16 th , 17 th , 19 th , 25 th , 26 th , 27 th , and 30 th		
	July 2008	8 th , 21 st , 23 rd , 24 th , 29 th , and 30 th		
	August 2008	1 st , 4 th , 11 th , 12 th , 13 th , and 28 th		
	September 2008	2 nd , 3 rd , 8 th , 9 th , 10 th , 11 th , 22 nd , 23 rd , 24 th , and 25 th		
October 2, 2008	October 2008	6 th , 8 th , 13 th , 21 st , and 22 nd	1381.71 mg/kg	229.0%
	November 2008	3 rd , 4 th , 5 th , 10 th , 18 th , 19 th , 20 th , and 21 st		

- b. Based on a review of Respondent's discharge monitoring reports ("DMRs"), Respondent's West WWTP exceeded the NPDES permit limitations for Ammonia as N at Outfall #001 as follows:

Date of Violation	Effluent Limit	Reported Effluent Limit	Percent Exceedance
February 2007	2.0 mg/L	2.5 mg/L	25%
February 2007	4.0 mg/L	6.74 mg/L	69%
March 2007	2.0 mg/L	2.8 mg/L	40%
March 2007	4.0 mg/L	6.74 mg/L	69%
October 2007	1.7 mg/L	2.5 mg/L	47%
October 2007	3.4 mg/L	8.8 mg/L	159%
March 2008	2.0 mg/L	2.1 mg/L	5%
March 2008	4.0 mg/L	5.0 mg/L	25%
April 2008	2.0 mg/L	3.8 mg/L	90%

April 2008	4.0 mg/L	6.0 mg/L	50%
May 2008	3.4 mg/L	4.4 mg/L	29%
June 2008	1.7 mg/L	5.9 mg/L	247%
June 2008	3.4 mg/L	9.8 mg/L	188%
September 2008	3.4 mg/L	3.6 mg/L	6%
January 2009	4.0 mg/L	5.8 mg/L	45%
February 2009	2.0 mg/L	2.9 mg/L	45%
February 2009	4.0 mg/L	7.3 mg/L	83%

c. Based on a review of Respondent's discharge monitoring reports ("DMRs"), Respondent's East WWTP exceeded the NPDES permit limitations for Ammonia as N at Outfall #001 as follows:

Date of Violation	Effluent Limit	Reported Effluent Limit	Percent Exceedance
May 2007	0.8 mg/L	2.1 mg/L	163%
May 2007	1.6 mg/L	5.1 mg/L	219%
June 2007	0.8 mg/L	1.0 mg/L	25%
June 2007	1.6 mg/L	2.0 mg/L	25%
August 2007	1.6 mg/L	2.1 mg/L	31%
September 2007	1.6 mg/L	2.1 mg/L	31%
March 2008	1.4 mg/L	1.8 mg/L	29%
March 2008	2.8 mg/L	3.0 mg/L	7%
April 2008	1.4 mg/L	1.9 mg/L	36%
April 2008	1.4 mg/L	3.2 mg/L	129%
May 2008	0.8 mg/L	3.1 mg/L	288%

May 2008	1.6 mg/L	7.7 mg/L	381%
June 2008	0.8 mg/L	4.6 mg/L	475%
June 2008	1.6 mg/L	6.2 mg/L	288%
July 2008	0.8 mg/L	4.0 mg/L	400%
July 2008	1.6 mg/L	5.5 mg/L	244%
August 2008	0.8 mg/L	16.9 mg/L	2013%
August 2008	1.6 mg/L	27.6 mg/L	1625%
September 2008	0.8 mg/L	9.0 mg/L	1025%
September 2008	1.6 mg/L	14.0 mg/L	775%
January 2009	1.4 mg/L	2.2 mg/L	57%
January 2009	2.8 mg/L	3.9 mg/L	39%
March 2009	1.4 mg/L	6.2 mg/L	343%
March 2009	2.8 mg/L	14.2 mg/L	407%
April 2009	1.4 mg/L	2.7 mg/L	93%
April 2009	2.8 mg/L	4.2 mg/L	50%
May 2009	0.8 mg/L	1.7 mg/L	113%
May 2009	1.6 mg/L	2.4 mg/L	50%

Findings of Violation

26. Respondent's application of sewage sludge to the land in concentrations exceeding the ceiling concentrations for Nickel during the time periods identified in Paragraph 25, subparagraph (a), above, is a violation of Respondent's NPDES Permit and 40 C.F.R. Part 503.13, and as such is a violation of Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1).

27. Respondent's failure to comply with the effluent limitations for Ammonia as N during the time periods identified in Paragraph 25, subparagraphs (b) and (c), above, is a violation of its NPDES permit and as such is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Order for Compliance

28. 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.

29. Immediately upon the Effective Date 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 of the applicable requirements of its NPDES permit.

30. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide EPA a proposed Compliance Plan, for EPA's review and approval, which shall describe in detail how Respondent intends to eliminate future violations of its NPDES permit. At a minimum, the proposed Compliance Plan shall include:

- a. A description of actions Respondent proposes to undertake at the POTW to eliminate effluent violations;
- b. A description of actions Respondent proposes to undertake to ensure sewage sludge is applied to the land only when consistent with 40 C.F.R. Part 503, and shall include but not be limited to monitoring and documentation practices and plan for alternative sewer sludge management and disposal methods, i.e. bulk sewer sludge application; and
- c. A schedule for implementation of the proposed action(s) as soon as practicable.

31. EPA will review the proposed Compliance Plan, as described in Paragraph 30 above, and notify Respondent in writing of EPA's approval, disapproval, or modification of the submittal, or any part thereof. Upon receipt of EPA's approval or notice of modification(s), Respondent shall commence work and implement any approved submittal in accordance with the schedule and provisions contained therein. EPA approved submittals shall be deemed incorporated into and enforceable as part of this Order.

32. For one year from the effective date of this Order, Respondent shall submit to EPA on a quarterly basis, monthly DMRs. The reports shall be submitted no later than the 28th day of the month following the end of the calendar quarter (e.g., January 28, April 28, July 28, and October 28).

33. For one year from the effective date of this Order, Respondent shall submit to EPA on a monthly basis, a Monthly Report documenting all sample results for each land application that occurred during that month. The reports shall be submitted no later than the 5th day of the month following the end of the previous month in which the documented land applications occurred (e.g. sample information from a land application that occurred on January 1st would be included in the February 5th Monthly Report).

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

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 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

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

Berla Jackson-Johnson
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

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

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

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

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

37. 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 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.

38. This Order does not constitute a waiver or a modification of any requirements of the CWA, 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(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. 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 CWA for any violation whatsoever.

Access and Requests for Information

39. 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

40. 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

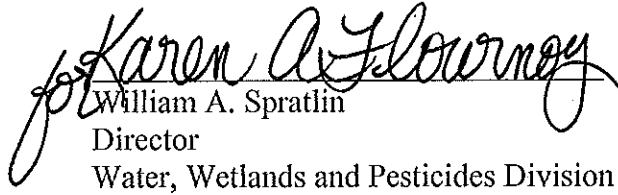
41. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Order.

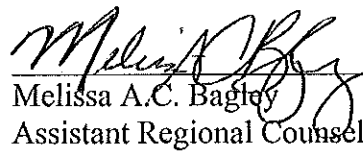
Termination

42. 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 all of the requirements of this Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 1st day of February, 2010.


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Melissa A.C. Bagley
Assistant Regional Counsel

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:

Stuart (Mit) Landrum
Mayor
City of Farmington, Missouri
110 West Columbia Street
Farmington, Missouri 63640

2/1/10
Date

Laura A. Moreno