

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,
) ORDER FOR COMPLIANCE
)
City of Joplin, Missouri)
602 South Main Street)
Joplin, Missouri 64801)
)
)
Proceedings under Section 309(a)(3)) Docket No. CWA-07-2009-0001
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
)
)

I. Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. The City of Joplin, Missouri (hereafter “Respondent” or “City of Joplin”) owns and operates a publicly owned treatment works (“POTW”) that treats domestic, commercial, and industrial wastewater.

3. 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”) program pursuant to Section 402 of the CWA and its implementing regulations. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA pursuant to Section 309(g) and 402(i) of the CWA, 33 U.S.C. § 1319(g) and § 1342(i).

II. Jurisdiction and General Allegations

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, permits issued under the authority of 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.

5. The Respondent, City of Joplin, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all relevant times, Respondent has owned and operated two wastewater treatment facilities ("WWTFs") and their associated sewer and stormwater collection and transmission systems, which receive and treat wastewater and stormwater runoff from residential, commercial, and industrial connections within the City of Joplin, Missouri and several unincorporated areas located in Jasper and Newton Counties, Missouri.

7. Respondent's WWTFs and corresponding collection system include approximately 370 miles of sewer line and 15 lift stations. This collection system services a population of approximately 55,000, which includes 17,000 residential connections, 1,800 commercial connections, and 200 industrial connections to sanitary sewer lines.

8. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 and the Missouri Clean Water Law, Chapter 644 of the Missouri Revised Statutes, and the implementing regulations at 10 CSR 20-1.010 et seq., MDNR issued the City of Joplin a NPDES permit for the Shoal Creek Wastewater Treatment Facility, Permit Number MO-0023256, effective March 10, 2006, and expiring on March 9, 2011 and a NPDES permit for the Turkey Creek Wastewater Treatment Facility, Permit Number MO-0103349, effective January 26, 2007, revised March 9, 2007, and expiring on January 25, 2012.

9. At all relevant times, Respondent has "discharged pollutants" from its POTW within the meaning of Sections 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6) and (12), from "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to waters of the United States, including Shoal Creek, Shoal Creek 3, Turkey Creek, and their associated tributaries, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

11. At all relevant times, Respondent's NPDES permits for the WWTFs have authorized Respondent to discharge pollutants only from specified point sources, identified in the permits as one or more numbered "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permits.

12. On December 3 and 4, 2007, an EPA representative performed an inspection of the Respondent's facilities under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspection included (1) completion of the Sanitary Sewer Overflow (SSO) Inspection checklist; (2) a facility walk through, including 3 lift stations; and (3) a review of self-monitoring records and complaint logs.

13. Within the past five years, Respondent has experienced discharges of untreated wastewater from lift stations and/or other locations within the Respondent's wastewater

collection system, (hereinafter referred to as "sanitary sewer overflows" or "SSOs"). None of the locations of these discharges are numbered outfalls identified in Respondent's NPDES permits.

14. Specifically, on June 29, 2007, Respondent experienced a discharge of untreated wastewater from a manhole into Shoal Creek directly upstream of a local swimming beach. The City of Joplin notified MDNR on July 9, 2007, of the SSO.

15. Respondent's NPDES permits, Part 1- General Conditions, Section B- Management Requirements, requires Respondent to provide MDNR with oral notification within twenty-four hours of becoming aware of any noncompliance that may endanger health or the environment. A written submission is also required to be provided by Respondent to MDNR within five days of becoming aware of any noncompliance that may endanger health or the environment, unless waived by MDNR.

16. Respondent's unpermitted discharges from its POTW have resulted from multiple causes, including poor operation and maintenance of the Tin Cup lift station and the Filmore Bridge lift station and blockages at the Filmore Bridge lift station due to improper and inadequate design.

17. Each discharge of pollutants as identified in Paragraphs 13, 14, 15, and 16 above is a violation of the terms and conditions of the NPDES permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the City of Joplin, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

III. Findings of Violation

Unpermitted Discharges from Sanitary Sewer System

18. Paragraphs 1-17 are realleged and incorporated herein by reference.

19. On June 29, 2007 and September 8, 2007, and upon information and belief continuing to the present, Respondent has discharged pollutants from point sources within its separate sanitary sewer collection and transmission system, none of which are identified in its NPDES permits as authorized outfalls. These SSOs are not permitted or otherwise authorized by the CWA.

20. Each day of each discharge referred to in Paragraph 19 constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Violation of Proper Operation and Maintenance Condition (Standard Condition I.B.3&4)
in Respondent's NPDES Permits**

21. Paragraphs 1-17 are realleged and incorporated herein by reference.

22. Pursuant to 40 C.F.R. § 122.41(e), each of Respondent's NPDES Permits contains the following Standard Condition at Part I.B.3:

"Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions. Operators or supervisors of operations at publicly owned or publicly regulated wastewater treatment facilities shall be certified in accordance with 10 CSR 209.020(2) and any other applicable law or regulation."

Part I.B.4 of each of Respondent's NPDES Permits require that

"[t]he permittee shall take all necessary steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit or set forth in the Missouri Clean Water Law and Regulation"

(hereafter Part I.B.3&4 collectively referred to as "Proper Operation and Maintenance Condition").

23. The inspection described in Paragraph 12 above, concluded poor operation and maintenance of the Tin Cup lift station and the Filmore Bridge lift station and blockages at the Filmore Bridge lift station due to improper and inadequate design caused and/or contributed to the illegal discharges alleged in Paragraph 19 above.

24. Many of the illegal discharges alleged in Paragraph 19 above, resulted, in whole or in part, from Respondent's failure to comply with the Proper Operation and Maintenance Condition in Respondent's NPDES permits (Part I.B.3&4), in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

25. Each day Respondent failed to comply with the Proper Operation and Maintenance Condition of its NPDES permits (Part I.B.3&4) constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

**Violation of the Noncompliance Notification Condition (Standard Condition I.B.2.b) in
Respondent's NPDES Permits**

26. Paragraphs 1-17 are realleged and incorporated herein by reference.

27. Pursuant to 40 C.F.R. 122.41(l)(6), each of Respondent's NPDES Permits contain the following Standard Condition at Part I.B.2.b:

Noncompliance Notification

b. Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally with 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided with[in] five (5) days of the time the permittee becomes aware of the circumstances . . . (hereinafter referred to as the "Noncompliance Notification Condition").

28. Upon information and belief, Respondent in whole or in part, has failed to comply with the Noncompliance Notification Condition of its NPDES Permits (Part I.B.2), in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by failing to provide timely notice and report of unpermitted discharges of raw sewage, as described in Paragraphs 14 and 19 above, that may endanger health or the environment.

29. Each day Respondent failed to comply with the Noncompliance Notification Condition of its NPDES Permits constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

IV. Order for Compliance

30. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in Paragraphs 31 through 33.

31. Respondent shall immediately comply with the Noncompliance Notification Condition of Respondent's NPDES permits. Beginning from the date of issuance of this Order for two years, provide a copy of each Noncompliance Notification to EPA, as set forth in paragraph 34 of this Order.

32. Within 60 days of the issuance of this Order, the Respondent shall submit to EPA for review and approval a detailed Plan of Action (POA) with the goal to eliminate SSO events related to the improper operation and maintenance of the Tin Cup lift station and Filmore Bridge lift station and the improper and inadequate design of the Filmore Bridge lift station. The POA shall contain an implementation schedule and completion date.

33. Within 30 days of receipt of EPA's comments on the POA, the Respondent shall modify the POA accordingly and shall immediately implement the POA.

Submissions

34. All documents required to be submitted to EPA by this Order, shall be submitted by mail to **Ms. Berla Johnson, Compliance Officer**, at the following address:

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U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
901 North 5th Street
Kansas City, Kansas 66101.

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

Kevin Mohammadi
Enforcement Section Chief, Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Cindy Davies
Director, Southwest Regional Office
Missouri Department of Natural Resources
2040 West Woodland
Springfield, Missouri 65807-5912.

Certification

36. All submissions made by Respondent to EPA and MDNR pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.22:

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.

V. 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 recover

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

Termination

42. Within ninety (90) days after Respondent has satisfied the terms of this Order by establishing, and successfully implementing for a period of twelve (12) months; all the operation and maintenance improvements and programs and other requirements in this Order as set forth in Paragraphs 31 through 33, Respondent shall submit for EPA review and approval a final report ("Final Report") that includes a description of all of the actions which have been taken toward achieving compliance with this Order, an assessment of the effectiveness of such actions in preventing SSOs, and an analysis of whether additional actions beyond the scope of this Order are necessary to further eliminate SSOs as a result of operation and maintenance and inadequate design at the list stations as described in Paragraphs 16, 23, and 24. If EPA determines that Respondent has provided a satisfactory Final Report as required above and has satisfied the terms of this Order as set forth above, EPA will provide notice to Respondent, and this Order shall be deemed terminated. If EPA determines that the Final Report is not satisfactory or that Respondent has not satisfied any term of this Order as set forth above, EPA will notify Respondent and provide a list of the deficiencies which may include but not be limited to a requirement that Respondent modify an operation and maintenance program as appropriate in

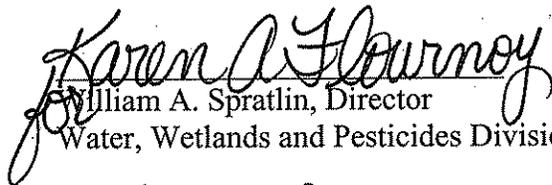
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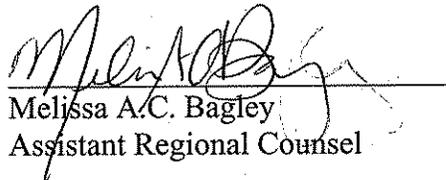
order to correct a deficiency. In this event, Respondent shall correct such deficiencies, immediately implement such corrections, and shall submit a modified Final Report for review and approval in accordance with the EPA notice.

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 21st day of October, 2008.


William A. Spratlin, Director
Water, Wetlands and Pesticides Division


Melissa A.C. Bagley
Assistant Regional Counsel

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CERTIFICATE OF SERVICE

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

Mayor Gary Shaw
City of Joplin, Missouri
602 South Main Street
Joplin, Missouri 64801;

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

Cindy Davies
Director, Southwest Regional Office
Missouri Department of Natural Resources
2040 West Woodland
Springfield, Missouri 65807.

OCT 22 2008

Date

Name

