

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

IN THE MATTER OF)
)
The City of Sullivan, Missouri,) Docket No. CWA-07-2016-0050
)
Respondent.) FINDINGS OF VIOLATION
) AND ORDER FOR COMPLIANCE
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. This Administrative Order for Compliance (“Order ”) 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 in this case is the City of Sullivan, Missouri (“Respondent”).

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 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. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (“POTW”).

4. 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 and Pretreatment programs pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and applicable implementing regulations, including 40 C.F.R. Part 403. As such, the MDNR is the Approval Authority for the Pretreatment Program in Missouri.

5. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

General Factual and Legal Allegations

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

7. At all times relevant, Respondent was, and still is, the owner and/or operator of a publically owned treatment works (“POTW”) in Franklin County, Mo., which 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.

8. The WWTP discharges to Winsel Creek.

9. The City’s WWTP is a “point source” that “discharges pollutants” to a “navigable water” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*

10. On or about May 22, 2009, MDNR revised the NPDES Permit No. MO-0104736 (“Permit”) to Respondent pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, which required the City to, among other things, develop and submit for approval a Pretreatment Program. This Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, required the City to comply with numeric limitations on discharges of wastewater and, among other things, to develop and submit a Pretreatment Program to MDNR for approval.

11. Respondent’s Pretreatment Program was approved by MDNR on or about February 17, 2010.

12. Section E of the revised Permit, Special Conditions, at paragraph 9, requires the City to implement and enforce its approved Pretreatment Program in accordance with the requirements of the General Pretreatment Regulations, 40 C.F.R. Part 403.8, and Missouri Clean Water Commission regulations at 10 C.S.R. 20-6.100.

13. Respondent's approved Pretreatment Program includes, but is not limited to, a description of the Pretreatment Program, an Enforcement Response Plan (“ERP”), which was approved by MDNR on or around February 17, 2010, and legal authority to administer the program adopted and revised *as* City of Sullivan, Wastewater Pretreatment Regulations, Chapter 725, *et.seq.* (hereafter “Code”).

14. On or about May 13-14, 2015, EPA performed a Pretreatment Program Audit (“Audit”) of the City’s Pretreatment Program implementation activities pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). EPA’s inspection found three Significant Industrial Users (“SIUs”) as defined at 40 C.F.R. 403.3(v), discharging to the POTW, with two SIUs subject to categorical federal standards, as defined at 40 CFR 403.6 and 40 CFR chapter I, subchapter N.

15. A copy of the Audit report was sent to MDNR and the City on or around August 10, 2015.

16. During the Audit, EPA interviewed City Pretreatment personnel, reviewed documents, including the City’s Ordinance and records maintained by the City regarding its implementation of the Pretreatment Program. The information gathered by EPA documented the violations of the City’s Pretreatment Program and the CWA alleged below.

Findings of Violation

Failure to implement approved Pretreatment Program

17. The facts stated in paragraphs 6 through 16 above, are hereby incorporated by reference.

18. Based on information and data collected during the Audit and other relevant information, EPA determined that the Respondent failed to implement its approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403, as follows:

- a. Respondent failed, in violation of Ordinance Section 725.430 and 40 C.F.R. § 403.8(f)(2)(v), to properly monitor and evaluated their SIUs, including the following:
 - i. The City did not sample Sullivan Precision Metal Finishing (SPM) in 2013,
 - ii. The City did not sample and inspect Eaton Funeral Home (Eaton) in 2014,
 - iii. The City did not sample and inspect Aerofil Technologies (Aerofil) in 2014,
 - iv. The City, when conducting inspections, did not monitor their industrial users (IUs) pH discharges.
- b. Respondent failed, in violation of Ordinance Section 725.320 and 40 C.F.R. § 403.12(e) and (h) to properly implement the approved Pretreatment program which requires SIUs to sample their discharge at least twice each year (June and December), unless specified by a discharge permit issued by the City sample more frequently, to determine compliance with pretreatment limitations and submit a signed and certified report with the results of such sampling

- i. SPM failed to monitor their discharges for 17 months from 2012-2015, as required by the permit issued by the City, and the City did not respond to these reporting violations.
 - ii. Aerofil failed to monitor their discharges four months from 2013-2014, as required by the permit issued by the City, and the City did not respond to these reporting violations.
 - iii. SPM submitted monitoring reports without certifying the documents, as required by the permit issued by the City, and the City did not respond to these reporting violations.
- c. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2) and,(5) to properly implement the Enforcement Response Plan as part of the approved Pretreatment program as identified by the items in 18(b) above.
- d. Ordinance Section 725.460 of the City's Pretreatment Program, and 40 C.F.R § 403.8(f)(2)(viii) require the City to identify and provide at least annual public notice of any of its SIUs that are in Significant Noncompliance and failed to provide notice when SPM discharged a slug load on January 2, 2013, to the WWTP which resulted in the landfilling of biosolids rather than land application. SPM discharged a low pH wastewater to the WWTP on April 19-20, 2014, which resulted in the WWTP violating its' effluent limits.

19. Respondent's violations identified in paragraph 18 above are violations of the requirement of NPDES Permit No. MO-0104736 to implement its Approved Pretreatment Program, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d), and regulations promulgated thereunder at 40 C.F.R. Part 403.

Order for Compliance

20. Based on the foregoing FINDINGS of VIOLATIONS and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

21. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide the following to EPA for review and approval:

- a. A list of all potential SIUs discharging to the POTW, a statement of each SIUs average daily process water consumption, and a statement whether each identified SIU is subject to the federal Categorical Pretreatment Standards found at 40 C.F.R. Parts 405 through 471. The list shall identify all those facilities the City intends to permit under the Pretreatment program.

- b. A draft of the permit form that Respondent intends to use in meeting the requirements of 40 C.F.R. § 403.8(f)(1)(iii), to "[c]ontrol through permit, order, or similar means" the contribution of its Significant Industrial Users. In addition, Respondent shall provide a schedule identifying when each permit for each SIU will be issued.
- c. A copy of the City's current Sewer Use Ordinance, and the identification of all modifications made since Respondent's Pretreatment Program was approved on or around February 15, 2011.
- d. A proposed schedule for inspecting and sampling all SIUs discharging to the POTW, to be completed no later than January 31, 2017.
- e. A copy of its approved ERP. If Respondent elects to modify its ERP in accordance with procedures found in 40 C.F.R. Part 403 during the duration of this Order, a copy shall be sent to EPA at the same time it is sent to MDNR for approval.
- f. A statement on whether the Pretreatment staff is properly trained, and if training is found to be needed, how and when the City will acquire the training.

Reporting

22. Beginning July 28, 2016, Respondent shall submit to EPA on a quarterly basis (postmarked no later than January 28, April 28, July 28 and October 28) until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 35, below, the following information regarding its Pretreatment implementation and enforcement activities during each reporting quarter:

- a. a report on the Respondent's determination of the compliance status for each SIU;
- b. a copy of each permit issued to an SIU during the quarter;
- c. copies of any periodic compliance reports submitted by SIUs to the Respondent;
- d. a description of any enforcement taken by Respondent pursuant to the terms of its ERP;
- e. For each SIU, a copy of the inspection report(s), checklist and slug control plan determination for each inspection of an SIU that Respondent has conducted during the quarter, or a statement that Respondent has conducted no SIU inspections, and a statement of when an inspection is scheduled; and

- f. a copy of the sample results for each SIU sampled by Respondent during the quarter and a copy of any correspondence issued in response to such sampling, or a statement that Respondent has conducted no sampling of SIUs, and a statement of when an inspection is scheduled.

Certification

23. 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

24. All documents required for submittal to EPA shall be sent by certified mail, return receipt requested, to the following:

Mr. Seth Draper, Enforcement Officer
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
11201 Renner Blvd
Lenexa, Kansas 66219.

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

Walter Fett, Environmental Engineer
NPDES Permits & Engineering Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of This Order for Compliance

26. Compliance with the terms of this Order shall not relieve the Respondent of liability for, or preclude 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.

27. 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. The 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

28. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect the Respondent's POTW and WWTF, and/or to request additional information from any Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

29. If any provision or authority of this Order, or the application of this Order to a Respondent, is held by federal judicial authority to be invalid, the application to the Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

30. This Order shall apply to and be binding upon the Respondent, and the Respondent's agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

Failure to Comply

31. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court for the Eastern District of Missouri may impose such penalties if, after notice and

opportunity for a hearing, the court determines that you have violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

Judicial Review

32. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. § 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

Opportunity to Confer


33. Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondents. Within ten (10) days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to the EPA. If Respondents request a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

Effective Date

34. The terms of this Order shall be effective and enforceable against Respondent 30 days after receipt of an executed copy of the Order.

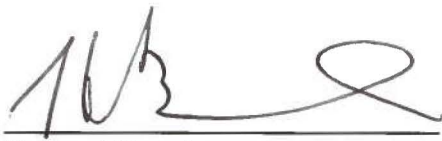
Termination

35. 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.



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

5-11-10
Date:



Howard Bunch
Assistant Regional Counsel
Office of Regional Counsel

5-13-16
Date:

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, United States Environmental Protection Agency, 11201 Renner Blvd., 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 Dennis Watz
Mayor, City of Sullivan, Missouri
210 W. Washington
Sullivan, Missouri 63080

and by first class mail to:

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

5/13/2016
Date

