

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2013 JAN 28 PM 3:25

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. CWA-07-2012-0041
)
THE CITY OF BILLINGS, MISSOURI,)
)
)
) ADMINISTRATIVE ORDER FOR
) COMPLIANCE ON CONSENT
)
Respondent,)
)
)
)
Proceedings under Sections 308(a) and)
309(a)(3) of the Clean Water Act,)
33 U.S.C. §§ 1318(a) and 1319(a)(3))
)
_____)

Preliminary Statement

1. This Administrative Order for Compliance on Consent (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to the City of Billings, Missouri (“City” or “Respondent”), pursuant to the authority vested in the Administrator of EPA by Sections 308 and Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319(a), as amended. This authority has been redelegated by the Administrator to the Regional Administrator of EPA, Region 7, and further delegated to the Director of Region 7’s Water, Wetlands, and Pesticides Division.

2. EPA, together with the City, enter into this Section 309(a)(3) Order for Compliance on Consent in order to carry 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.”

3. It is the parties’ intent through this agreement to address discharges of pollutants by the City into the waters of the United States in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful.

4. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

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 an 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, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

9. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA. Section 308 of the CWA, 33 U.S.C. § 1318, authorizes the EPA to request and collect information in order to, among other matters, determine whether the owner of a point source is in compliance with the CWA.

10. 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, the implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA Findings

Findings of Fact and Law

11. The City of Billings is a political subdivision of the state organized under the laws of Missouri, and as such is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources.

13. The City’s POTW discharges to an unnamed tributary of Turnback Creek, which are both “navigable waters” and “waters of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

14. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

15. The City’s POTW is a “point source” that “discharges pollutants” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

17. MDNR issued NPDES Permit No. MO-0042480 to the City for discharges from its POTW to the unnamed tributary to Turnback Creek. The NPDES permit (hereafter “2005 NPDES permit”) became effective August 30, 2005, expired August 29, 2010, and was administratively extended.

18. MDNR reissued NPDES Permit No. MO-0042480 to the City for discharges from its POTW to the unnamed tributary to Turnback Creek. The reissued NPDES permit (hereafter “2011 NPDES permit”) became effective January 18, 2011, and will expire January 17, 2016.

19. On January 23 through 26, 2012, an EPA representative performed a Compliance Sampling Inspection (hereafter “the EPA inspection”) of the City’s 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.

20. During the EPA inspection, the inspector collected wastewater samples from the City’s WWTP influent and effluent, reviewed the City’s records related to the NPDES permits, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges. The EPA inspector’s observations included, but were not limited to, the following:

- a. the City had not been submitting noncompliance notifications to the MDNR within five days of each exceedance of daily maximum permit limits, and
- b. the infiltration and inflow detection and elimination measures the City has taken do not appear to be adequate.

Findings of Violation

21. The facts stated in Paragraphs 11 through 20, above, are herein incorporated.

Notification of Noncompliance

22. Part I, Section B.2. of the Standard Conditions section of the City's 2005 and 2011 NPDES permits requires that if for any reason the City does not comply with, or will be unable to comply with, any daily maximum effluent limitations specified in the permit, the City shall notify MDNR in writing within five days of becoming aware of such condition.

23. The EPA inspection referenced in Paragraph 19, above, revealed that the City failed to submit noncompliance notifications to the MDNR within five days of each exceedance of the daily maximum TRC permit limit, which occurred at least once each month during the months of January, February, March, April, May, June, August, September, October, and November 2009; January, February, March, April, May, September, November, and December 2010; and January, February, March, April, and May 2011.

24. As a result of Respondent's continuing failures to comply with the notification of noncompliance requirement, EPA finds that Respondent is in a state of noncompliance with the requirements of Part I, Section B.2. of the Standard Conditions of the City's NPDES permits.

25. Each of Respondent's failures particularly described in Paragraph 23 constitutes a violation of the terms and conditions of its 2005 and 2011 NPDES permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

26. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), having taken into account the seriousness of the violations, and considering further that the City may undertake to modify and implement standard operating procedures that detail notification procedures in order to comply with the notification requirements, EPA finds that 30 days is a reasonable time for the City to comply with the requirements of Part I, Section B.2. of the Standard Conditions of its NPDES permit.

Unpermitted Discharges

27. Paragraph 5 of the Standard Conditions section of the City's 2005 and 2011 NPDES permits prohibits any bypass or shut down of facilities that results in a violation of permit limits or conditions, except under circumstances not applicable here.

28. Part A, the Effluent Limitations and Monitoring Requirements section of the City's 2011 NPDES permit, authorizes discharges from Outfall 001 at the wastewater treatment facility.

29. The Facility Description section on the first page of the City's 2011 NPDES Permit requires the City to report flows above design peak flow that are diverted from the Secondary Treatment Units, pursuant to 40 C.F.R. § 122.41(m).

30. Information obtained during the EPA inspection and review of the City's bypass and sanitary sewer overflow reports submitted to MDNR pursuant to 40 C.F.R. § 122.41(m) reveal that the City has discharged flows from the City's collection system at locations other than Outfall 001 on at least October 8-9, 2009; May 20, 2010; an unknown date through June 6, 2010; September 9, 2010; January 24, 2011; April 2, 2011; April 24-25, 2011; and May 1-2, 2011. The City has also discharged flows from the overflow basin at the WWTP on at least October 8, 2009; March 26, 2010; March 14, 2011; April 24, 2011; April 25, 2011; and May 1, 2011. As a result of these events, the City has discharged at least 1,416,150 gallons of untreated wastewater from its sanitary sewer collection system and the WWTP overflow basin.

31. As a result of Respondent's continuing failures to discharge only from the authorized outfall, EPA finds that Respondent is in a state of noncompliance with the requirements of the Standard Conditions and Part A of its 2011 NPDES permit.

32. Each discharge of pollutants from any location other than a permitted outfall, as particularly described in Paragraph 30, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

33. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), having taken into account the seriousness of the violations, and considering further the limited information currently available, including that Respondent will undertake to conduct a Sewer System Evaluation Survey and implement remedies to address the findings from the Evaluation in order to comply with the requirement to discharge only from authorized outfalls, EPA finds that a reasonable time for Respondent to comply with the requirements of the Standard Conditions and Part A of its NDPEs permit is by December 31, 2019, such date being subject to change pursuant to Paragraph 37.

Section 309(a)(3) Order for Compliance on Consent

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. §§ 1318(a) and 1319(a)(3), EPA hereby ORDERS, and Respondent hereby AGREES to take, the actions described below:

34. Immediately upon receipt of this Order, the City shall identify and implement all necessary actions to correct the deficiencies cited above, and to comply with the conditions and limitations of its NPDES permit.

35. *Compliance Plan.* Within 90 days of the effective date of this Order, the City shall submit to EPA, with a copy to MDNR, a comprehensive written plan for identifying the causes of unpermitted discharges, including the completion of a Sewer System Evaluation Survey ("SSES"), which the City will use to eliminate such discharges and achieve compliance with the City's NPDES permit conditions (the "Compliance Plan"). The Compliance Plan shall be prepared in accordance with Attachment 1 to this Order. The Compliance Plan shall include a proposed sequential milestone schedule for completing an SSES, with completion of the SSES and implementation of the corrective actions identified by the SSES done as expeditiously as possible with a final completion date of no later than December 31, 2019. The schedule for implementation of corrective measures identified by the SSES shall be established as part of the final SSES report submitted to EPA as described in Items 4 and 5 of Attachment 1. The schedule and the final completion date are subject to change pursuant to Paragraph 37. EPA will review and may provide comments on the City's Compliance Plan.

36. *Compliance Plan Completion.* Within 30 days of completion of the final scheduled corrective action, the City shall submit a written certification to EPA, with a copy to MDNR, that all City actions taken pursuant to this Order have been completed.

37. *Schedule Amendments.* The City and EPA acknowledge and agree that the completion date set forth above in Paragraph 35 is based upon all conditions known and information available as of the date of issuance of this Order. If during implementation of this Order, new information becomes available showing that the scope and complexity of the work necessary to eliminate unpermitted discharges and achieve compliance with permitted effluent limitations will be significantly more extensive than originally anticipated, and that it will be technically impracticable to meet the completion date despite use of best efforts by the City, then the City may request, and EPA shall in good faith consider granting an extension of time to complete the work. Any such request by the City for an extension of time shall be in writing and shall set forth in detail the new information that is the basis for the extension, and the reasons that Respondent believes it is technically impracticable, despite the use of best efforts, to meet the original completion date. In any request for extension, Respondent shall also propose and justify an alternative completion date. Any extension of time that is agreed to by the parties shall be in writing pursuant to Paragraph 53 herein.

38. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

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

Section 308 Information Demand

Based on the EPA's Findings set forth above, and pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, Respondent is required to make the following submissions:

40. Within 30 days of receipt of this Order, the City shall submit to EPA, with a copy to MDNR, a report describing the procedures implemented by the City to ensure compliance with the requirements concerning notification of noncompliance set out in the City's 2011 NPDES permit.

41. *Reporting to EPA and MDNR:* In addition to the submittals required by Paragraphs 35, 36 and 40 above, the City shall submit to EPA, with a copy to MDNR, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every January 28 and July 28 until termination of this Order pursuant to Paragraph 55 below; the first report is due July 28, 2013. These reports shall include, at a minimum:

- a. **Operation and Maintenance.** The first report shall include a written description of the actions the City has taken to identify and abate collection system I&I since January 1, 2009, and subsequent reports shall include a written description of any such actions taken by the City since the end of the last reporting period;
- b. **Compliance Plan Progress.** Until submittal of the written certification stipulated in Paragraph 36, each report shall include a detailed update on the progress of the Compliance Plan, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period; and
- c. **Discharge Monitoring Reports.** Each report submitted to EPA shall include a copy of that reporting period's Monthly Monitoring Reports, signed and certified as required by the regulations at 40 C.F.R. § 122.22. The City need not include a copy of any Discharge Monitoring Reports previously submitted to MDNR with the MDNR copy of any semi-annual report.

42. All submissions by the City to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official:

I certify that the City of Billings has complied with all the applicable requirements of the Order for Compliance. 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.

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

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

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

General Provisions

45. Failure to comply with the terms of the Section 309(a)(3) Compliance Order may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that you have violated the Act and failed to comply with the terms of the Order.

46. Failure to respond fully and truthfully to the Section 308 Information Demand may result in your liability for an administrative or judicial action by EPA to compel your response and/or seek civil penalties under Section 309 of the CWA, as modified by 40 C.F.R. Part 19. In addition, any person who knowingly submits false information may be subject to criminal prosecution under 18 U.S.C. § 1001.

Reservation of Rights

47. 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. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

48. With respect to matters not addressed in this Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and/or other legal remedies allowed by law.

49. 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 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.

50. Subject to the limitations of Paragraph 4, above, Respondent reserves the right to contest liability in any subsequent action filed by EPA to seek penalties for violation of this Order on Consent, and reserves the right to contest liability in any subsequent action filed by EPA for any violations alleged in the Findings, above.

Access and Requests for Information

51. 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

52. 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.

Modification

53. At EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by EPA by written notice to Respondent, without further formal amendment to the Order. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Effective Date

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

Termination

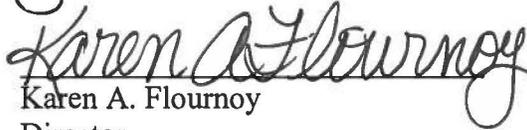
55. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until the City has corrected the deficiencies identified by this Order and demonstrated compliance with the terms of its NPDES permit.

Signatories

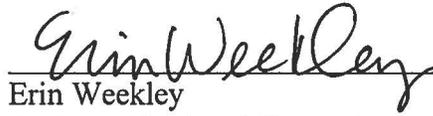
56. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this 22th day of January, 2013.



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7



Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Billings, Missouri:


Signature

Jan 21, 2013
Date

Bud Pierce
Name

MAYOR
Title

ATTACHMENT 1

1. **Statement of Purpose:** In order to analyze and determine what actions are required to address prohibited discharges/bypasses caused by wet weather impacts on a sewer system, EPA has developed guidance for performing Sewer System Evaluation Surveys (“SSES”). To address the documented incidents of illegal discharges/bypasses within the City of Billings, Missouri sewer collection system, the City of Billings is required, pursuant to the attached Order, to develop a Compliance Plan and implement the corrective actions identified therein. The City’s Compliance Plan shall include, but not necessarily be limited to, performance of an SSES as described below and in a manner consistent with EPA guidance.

2. **Sewer System Evaluation Survey - Planning.** The Compliance Plan required by Paragraph 35 of the Order shall consist of a comprehensive written plan and schedule for performing a complete SSES to identify collection system or treatment facility improvements required to reduce or treat peak wet weather flows at the wastewater treatment facility, including work required to eliminate overflows from the tributary collection system, as expeditiously as possible. The Compliance Plan shall include as a minimum:

- a. a summary of the work completed to date in addressing infiltration and inflow (I&I); and
- b. a detailed scope of work and schedule for performing the SSES.

3. **Sewer System Evaluation Survey - Performance.** Upon EPA’s review and approval of the proposed schedule (and receipt by the City of EPA comments on the proposed SSES), the City shall commence performance of the SSES. Within 10 days of commencing such work, the City shall submit a written certification stating the date such performance commenced.

4. **Sewer System Evaluation Survey – Report.** Within 30 days of completion of the work described in the SSES, the City shall submit a final SSES report to EPA for review. The final SSES Report shall include:

- a. a detailed description of investigations conducted and alternatives considered for correcting collection system I&I;
- b. specific I&I corrective measures the City has taken and/or proposes to take; and
- c. a detailed schedule (begin design, provide financing, start construction, complete construction, verify I&I reductions, eliminate system overflows, etc.) for each proposed project or action to implement the corrective measures.

5. **Compliance Plan Implementation.** Within 30 days of receipt of EPA’s approval of the proposed schedule set forth in the final SSES report to EPA for review, the City shall begin

implementation of the identified corrective measures in accordance with the approved Compliance Plan and SSES schedules, and shall submit written reports of commencement and implementation of the work as required by Paragraph 40.b. of the Order.

6. Sewer System Corrective Measures Completion. Within 30 days of completion of the final scheduled corrective action, the City shall submit a written certification that all City actions required by this order have been completed.

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

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

The Honorable Bud N. Pierce
Mayor, City of Billings
P.O. Box 207
Billings, Missouri 65610,

and by first class mail to:

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

1/29/13
Date

Kathy Robinson