

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)
)
The City of Maryville, Missouri)
Respondent)
)
NPDES Permit No. MO-0033286)
)
)
Proceedings under Section 309(a)(3) and)
308 of the Clean Water Act, 33 U.S.C.)
§ § 1319(a)(3), 1318)
_____)

Docket No. CWA-07-2009-0067

FINDINGS OF VIOLATION
AND ORDER FOR COMPLIANCE

I. STATUTORY AUTHORITY

The following FINDINGS OF VIOLATION are made and 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) and Section 308, 33 U.S.C. § 1318, which authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division.

II. FINDINGS OF FACT

1. The City of Maryville, Missouri ("Respondent" or "Maryville"), is a political subdivision of the State of Missouri and a "municipality" within the meaning of 33 U.S.C. § 1362(4).
2. Maryville owns and operates a wastewater treatment facility, which is a publicly owned treatment works ("POTW"), as that term is defined at 40 C.F.R. §§ 122.2 and 403.3. People Service Inc., ("PSI") is a contract operator of the POTW for Maryville. Maryville is a person, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. The wastewater treatment facility described in Paragraph 2 is a "point source" that "discharges pollutants" to the One Hundred and Two River that is a "navigable water," all as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 et seq.

4. 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.

5. During all times relevant to this Order, the “Industrial Users,” as that term is defined by 33 U.S.C. § 1362(18), of the Maryville POTW described in Paragraph 2, discharged non-domestic pollutants into the Maryville POTW.

6. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and MDNR dated October 30, 1974. MDNR is also the state agency with the authority to administer the Pretreatment Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations at 40 C.F.R. § 403.10, and a Memorandum of Understanding between EPA and MDNR dated June 3, 1981. As such, MDNR is the Approval Authority for the Pretreatment Program in Missouri. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

7. Maryville’s Pretreatment Program was approved by MDNR on or about December 28, 1984, thus Maryville is the “Control Authority” as defined in 40 C.F.R. Part 403.12(a). Maryville’s approved Pretreatment Program sets forth procedures for implementing requirements for regulating industrial discharges to Respondent’s POTW, and specifically incorporates requirements set forth at 40 C.F.R. § 403.8.

8. On September 19, 2003, NPDES Permit No. MO-0033286 was issued to Respondent by MDNR pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Respondent’s NPDES permit’s Paragraph 7 of the Special Conditions states that the “Permittee shall implement and enforce its approved pretreatment program in accordance with the requirements of 40 C.F.R. Part 403. The approved pretreatment program is hereby incorporated by reference.” On February 13, 2009, and March 20, 2009, Respondent’s NPDES permit was reissued, and includes the same Special Conditions described above, set forth as Paragraph 11 of the current NPDES permit.

9. As the approved pretreatment Control Authority, described in Paragraph 7, Maryville issued pretreatment permits to the following Significant Industrial Users (“SIU”), as defined in 40 C.F.R. § 403.3 (t), that discharge pollutants to Maryville’s POTW:

- a. LMP Steel and Wire, Industrial User Permit # M-113084-5, issued November 19, 2002, through November 18, 2007, and reissued as M-113084-6 on April 19, 2007, through April 18, 2012;

- b. Federal-Mogul Corporation, Industrial User Permit # M-121498-2, issued December 14, 2003, through December 13, 2008, and reissued M-121498-3 on December 14, 2008, through December 13, 2013;
- c. Deluxe Printing (formally d/b/a as New England Business Service), Industrial User Permit No. M-012285-5, issued November 25, 2002, through November 24, 2007, and reissued as M-012285-6 on November 25, 2007, through November 24, 2012;
- d. Eveready/Energizer Battery Company, Industrial User Permit No. M-121184-6, November 25, 2002, through November 24, 2007, and reissued M-121184-7 on November 25, 2007, through November 24, 2012;
- e. Kawasaki Motors Manufacturing Company, Industrial User Permit No. M-810190-05, issued December 15, 2002, through December 14, 2007, and reissued M-810190-06 on December 8, 2007, through December 7, 2012;
- f. Laclede Chain Manufacturing Company, Industrial User Permit No. M-120384-06, issued December 12, 2002, through December 11, 2007, and reissued M-120384-7 on December 12, 2007, through December 11, 2012; and
- g. St. Francis Hospital, Industrial User Permit No. M-021585-5, issued November 20, 2002, through November 19, 2007, and reissued M-021585-6 on November 20, 2007, through November 19, 2012.

10. On or about November 25, 1998, MDNR approved Respondent's Enforcement Response Plan as a modification to the Respondent's approved pretreatment program. Respondent's Enforcement Response Plan requires timely review of all sampling results to determine violations. Further, the Respondent's Enforcement Response Plan requires that enforcement action be taken to return a violator to compliance.

11. On May 15 through 17, 2007, EPA performed an on-site evaluation of the Respondent's pretreatment program, specifically Maryville's implementation of its approved pretreatment program. EPA provided the report documenting the findings of the evaluation to MDNR and Maryville on or about December 18, 2007.

12. On January 31, 2008, EPA issued a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Maryville. The Request for Information requested documentation of the Respondent's implementation of its approved pretreatment program. On or about March 27, 2008, and May 2, 2008, Maryville provided its response to the Request for Information.

13. The evaluation and Request for Information described in Paragraphs 11 and 12, above, identified violations of Maryville's NPDES permit, including the failure to implement its approved pretreatment program and the Pretreatment Regulations, 40 C.F.R. Part 403. Failure to implement its approved pretreatment program in compliance with its NPDES Permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Respondent has failed to implement its approved pretreatment program specifically as outlined in Paragraphs 14 through 25, identified as Counts 1 through 5 below.

III. VIOLATIONS

14. As described below in Counts 1 through 5, EPA's inspections and review of available information, including Maryville's response to EPA's Request for Information, document that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. 1311(a), by violating Paragraph 7 of its NPDES permit. Paragraph 7 of Maryville's NPDES permit required Maryville to "implement and enforce its approved pretreatment program in accordance with the requirements of 40 C.F.R. Part 403."

Count 1- Failure to Control through Permit the Significant Industrial Users Compliance

15. 40 C.F.R. § 403(f)(1)(iii) requires that Respondent control through permit, the contribution to the POTW of each SIU to ensure compliance with all applicable Pretreatment Standards and Requirements. The permit must be enforceable and along with other requirements, contain self-monitoring, sampling, reporting, notification and recordkeeping requirements, including identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on applicable general Pretreatment Standards, located in 40 C.F.R. Part 403, categorical Pretreatment Standards, local limits, and State and local law.

16. In violation of 40 C.F.R. § 403(f)(1)(iii), Respondent, among other inadequacies, failed to include in each of the SIUs' permits monitoring, sampling, reporting, notification, and recordkeeping requirements for pollutants based on applicable categorical Pretreatment Standards and local limits. The following deficiencies were identified in the evaluation and Request for Information described in Paragraphs 11 and 12, above:

- a. LMP Steel and Wire permit failed to include monitoring, sampling, reporting, notification, and recordkeeping requirements for the following pollutants: surfactants, benzene, Five- day biochemical oxygen demand ("BOD₅"), total phenols, and total suspended solids ("TSS");
- b. Federal-Mogul Corporation permit failed to include monitoring, sampling, reporting, notification, and recordkeeping requirements for the following pollutants: surfactants, benzene, BOD₅, total phenols, and TSS;
- c. Deluxe Printing (formally d/b/a as New England Business Service) permit failed to include monitoring, sampling, reporting, notification, and recordkeeping requirements for the following pollutants: surfactants, benzene, BOD₅, total phenols, and TSS;
- d. Eveready/Energizer Battery Company permit failed to include monitoring, sampling, reporting, notification, and recordkeeping requirements for the following pollutants: benzene, BOD₅, total phenols, and TSS;
- e. Kawasaki Motors Manufacturing Company permit failed to include monitoring, sampling, reporting, notification, and recordkeeping requirements for the following pollutants: surfactants, benzene, BOD₅, total phenols, and TSS;

- f. Laclede Chain Manufacturing Company permit failed to include monitoring, sampling, reporting, notification, and recordkeeping requirements for the following pollutants: surfactants, benzene, BOD₅, total phenols, and TSS; and
- g. St. Francis Hospital permit failed to include monitoring, sampling, reporting, notification, and recordkeeping requirements for the following pollutants: surfactants, benzene, and total phenols.

Count 2- Failure to Conduct Annual Inspection of the SIUs

17. 40 C.F.R. § 403(f)(2)(v) requires that Respondent inspect each SIU at least once a year.

18. In violation of 40 C.F.R. § 403(f)(2)(v), Respondent failed to conduct annual inspections for each of the seven SIUs, as identified in Paragraph 9, for the years 2005 and 2006. The failure to conduct the inspections was acknowledged in the evaluation described in Paragraph 11, and in addition, the Request for Information described in Paragraph 12, failed to produce any record of annual inspections for each of the SIU for the years 2005 and 2006.

Count 3- Failure to Conduct Annual Sampling of the SIUs' Effluent

19. 40 C.F.R. § 403.8(f)(2)(v) requires that Respondent sample the effluent from each SIU at least once a year.

20. In violation of 40 C.F.R. § 403.8(f)(2)(v), Respondent failed to sample the effluent as set forth in Table 1, below:

Table 1

Date(s) of Violations	Significant Industrial User	Parameters Not Sampled by Respondent
2004, 2005, 2006, 2007	Kawasaki Motors Manufacturing Company	Local limits at Outfalls 001 and 002; All parameters at Unidentified Outfall; Arsenic, Surfactant, Iron, total toxic organics ("TTO"), fats, oil, and grease ("FOG"), and pH at Unidentified Outfall
2004, 2005, 2006, 2007	Laclede Chain Manufacturing Company	Local limits at Outfall 001; Arsenic, Surfactant, Iron, TTO, FOG, and pH at Outfall 002
2004, 2005, 2006, 2007	St. Francis Hospital	Arsenic, Barium, Surfactant, Iron, TTO, FOG, pH, BOD and TSS at Outfall 001
2004, 2005, 2006, 2007	LMP Steel and Wire	Local limits at Outfall 001; Arsenic, Surfactant, Iron, TTO, FOG, and pH at Outfall 002
2004, 2005, 2006, 2007	Federal-Mogul Corporation	Local limits at Outfalls 001 and 003; Arsenic, Surfactant, Iron, TTO, FOG, and pH at Outfall 002
2004, 2005, 2006, 2007	Deluxe Printing (formally d/b/a as New England Business Service)	Arsenic, Surfactant, Iron, TTO, FOG, and pH at Outfall 001
2004, 2005, 2006, 2007	Eveready/Energizer Battery Company	Local limits at Outfall 001; Arsenic, Iridium, Iron, Manganese, Surfactant, TTO, FOG, and pH at Outfall 002

Count 4- Failure to Implement the Approved Enforcement Response Plan

21. 40 C.F.R. § 403.8(f)(5) requires Respondent to “implement an enforcement response plan.”

22. Provisions in Respondent’s enforcement response plan required the timely review of sampling results to determine violations. Moreover, the enforcement response plan requires that enforcement action be taken to return a violator to compliance.

23. Respondent, in violation of 40 C.F.R. § 403.8(f)(5), failed to implement their enforcement response plan as described in Paragraph 22, above, and specifically as set forth in Table 2, below:

Table 2

Date(s) of Violation	Significant Industrial User	Significant Industrial User Noncompliance	Enforcement Response Guide Description of Noncompliance	Enforcement Response Guide Recommended Action	Action Taken by Respondent
12/17/2004, 6/21/2005, 6/14/2006, 6/21/2007	Kawasaki Motors Manufacturing Company	Frequent improper sampling of Outfalls 003 and 004	Major Violation of Analytical Procedures- No Evidence of Negligence or Intent	NOV; Meeting; AO	None
2 nd Semiannual Report 2004, 2005, 2006, 2007	Kawasaki Motors Manufacturing Company	Frequent failure to sample Outfalls 001 and 002	Major Sampling, Monitoring Reporting Deficiencies	NOV; Meeting; Show Cause Hearing; Fine or Civil Litigation Seeking Penalties of \$300.00	None
12/1/2004, 6/1/2005, 11/17/2005, 6/21/2006, 5/21/2007	Deluxe Printing (formally d/b/a as New England Business Service)	Frequent improper sampling of Outfall 001	Major Violation of Analytical Procedures- No Evidence of Negligence or Intent	NOV; Meeting; AO	None
2 nd Semiannual Report 2006	Deluxe Printing (formally d/b/a as New England Business Service)	Failure to submit Semiannual Report	Complete Failure to Monitor or Report	AO; Civil Litigation and/or Criminal Prosecution Seeking Penalties of \$500.00 per day; Termination of Services	None
11/9/2004, 5/11/2005, 11/7/2005, 5/23/2006, 4/10/2007, 9/18/2007	Eveready/ Energizer Battery Company	Frequent improper sampling of Outfall 002	Major Violation of Analytical Procedures- No Evidence of Negligence or Intent	NOV; Meeting; AO	None
2 nd Semiannual	Eveready/ Energizer	Frequent failure to sample Outfall 001	Major Sampling, Monitoring Reporting	NOV; Meeting; Show Cause Hearing; Fine or	None

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Report 2004, 2005, 2006, 2007	Battery Company		Deficiencies	Civil Litigation Seeking Penalties of \$300.00	
1 st Semiannual Report 2005	LMP Steel and Wire	Failure to submit Semiannual Report	Complete Failure to Monitor or Report	AO; Civil Litigation and/or Criminal Prosecution Seeking Penalties of \$500.00 per day; Termination of Services	None
9/26/2004, 5/18/2005, 10/18/2005, 6/12/2006, 11/28/2006, 6/29/07, 9/17/2007	Laclede Chain Manufacturing Company	Frequent improper sampling of Outfall 002	Major Violation of Analytical Procedures- No Evidence of Negligence or Intent	NOV; Meeting; AO	None
2 nd Semiannual Report 2004, 2005, 2006, 2007	Laclede Chain Manufacturing Company	Frequent failure to sample Outfall 001	Major Sampling, Monitoring Reporting Deficiencies	NOV; Meeting; Show Cause Hearing; Fine or Civil Litigation Seeking Penalties of \$300.00	None
12/6/2004, 1/19/2005, 6/27/2005, 12/15/2005, 6/23/2006, 12/13/2006	St Francis Hospital	Frequent improper sampling of Outfall 001	Major Violation of Analytical Procedures- No Evidence of Negligence or Intent	NOV; Meeting; AO	None
2 nd Semiannual Report 2006	St Francis Hospital	Frequent late sampling of a pollutant	Major Sampling, Monitoring Reporting Deficiencies	NOV; Meeting; Show Cause Hearing; Fine or Civil Litigation Seeking Penalties of \$300.00	None
2 nd Semiannual Report 2006	St Francis Hospital	Frequent late submittal of Semiannual Report	Major Sampling, Monitoring Reporting Deficiencies	NOV; Meeting; Show Cause Hearing; Fine or Civil Litigation Seeking Penalties of \$300.00	None
2007	St. Francis Hospital	Failure to submit Semiannual Report	Complete Failure to Monitor or Report	AO; Civil Litigation and/or Criminal Prosecution Seeking Penalties of \$500.00 per day; Termination of Services	None

Count 5- Failure to Comply with Public Participation Requirements

24. 40 C.F.R. § 403.8(f)(2)(viii) requires “annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of the Industrial Users which, at any time during the previous 12 months, were in Significant Noncompliance with applicable Pretreatment regulations.”

25. In violation of 40 C.F.R. § 403.8(f)(2)(viii), Respondent failed to determine that each instance of SIU Noncompliance, identified above in Table 2, was Significant Noncompliance, as

described in 40 C.F.R. § 403.8(f)(2)(viii)(A)-(H), and therefore failed to comply for years 2005 through 2008 with public participation requirements of 40 C.F.R. Part 25 and 40 C.F.R. § 403.8(f)(2)(viii).

III. ORDER FOR COMPLIANCE

Based on the foregoing FINDINGS 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:

26. Immediately upon the effective date of this Order, Respondent shall implement its Enforcement Response Plan, as approved by MDNR on November 25, 1998. One year from the effective date of this Order, Respondent shall provide to EPA documentation of its implementation of its Enforcement Response Plan, including copies of any enforcement response.

27. Within thirty (30) days of the effective date of this Order, Respondent shall identify all Industrial Users that met the definition of Significant Noncompliance, defined by 40 C.F.R. § 403.8(f)(2)(viii), in calendar years 2004 through 2008, including those contained in Table 2, above. Respondent shall then publish a public notice in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the Respondent, the names of those Industrial Users in Significant Noncompliance. Respondent shall provide EPA and MDNR with a copy of this notice upon its publication.

28. Within sixty (60) days of the effective date of this Order, Respondent shall complete a re-evaluation of the current local limits. The re-evaluation shall be done in accordance with EPA's *Local Limits Development Guidance* published July 2004 and include the following:

- a. Conduct an industrial waste survey to identify any new or unknown industrial users that are subject to the pretreatment program;
- b. Determine the character and volume of pollutants contributed to the POTW by any new or unknown industrial users;
- c. Determine which pollutants have a reasonable potential for pass through, interference, or sludge contamination;
- d. Conduct a technical evaluation to determine the maximum allowable POTW treatment plant headworks (influent) loading for metals, including at least arsenic, cadmium, chromium, copper, cyanide, lead, mercury, nickel, silver, and zinc; benzene; pH; BOD5; oil and grease; total phenols; and total suspended solids;
- e. Identify additional pollutants of concern; and
- f. Determine contributions from unpermitted sources to determine the maximum allowable treatment plant headworks loading from "controllable" industrial sources.

29. Upon re-evaluation of the local limits, Maryville shall implement a system to ensure these loadings, described in Paragraph 28 above are not exceeded, including but not limited to a recalculation and/or revision of the local limits contained within Maryville's Ordinances. If

Maryville determines that a revision to and/or recalculation of the local limits is necessary, Maryville shall submit such modifications to MDNR, pursuant to 40 C.F.R. Part 403.18, within at least ninety (90) days of the effective date of this Order. Maryville shall provide to EPA a copy of the modifications submitted to MDNR.

30. Within One Hundred and Twenty (120) days of the effective date of this Order, Respondent shall review the SIU permits, as identified in Paragraph 9, and determine modifications necessary to ensure compliance with 40 C.F.R. § 403.8(f)(1)(iii), including any modifications to ensure the minimum conditions described in 40 C.F.R. § 403.8(f)(1)(iii)(B)(1)-(6) are appropriately applied.

31. Respondent shall submit to EPA for review and approval a report within One Hundred and Twenty (120) days that includes the following:

- a. A description of the process Maryville used to review the SIU permits;
- b. A list of all modifications identified from the review described in Paragraph 30;
- c. The most recent SIU permit applications;
- d. All relevant information and data supporting the calculations of mass based categorical limits and application of combined waste stream formulas where applicable; and
- e. Any other relevant and/or supporting documentation.

Upon EPA approval of the report, if any modifications are necessary in order to comply with 40 C.F.R. § 403.8(f)(1)(iii), Respondent shall take all measures within their authority to immediately include those modifications in the SIU permits. Upon the next reissuance of each of the SIU permits, Respondent shall submit a copy of the reissued permits to MDNR and EPA.

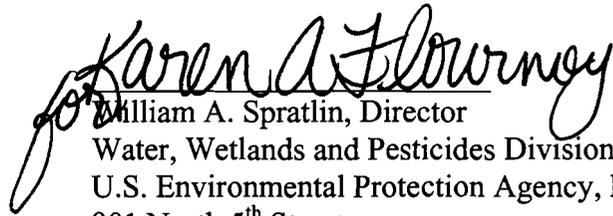
32. Respondent shall send all responses required by this Order to be submitted to EPA to:

Robert Bryant
Environmental Scientist
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

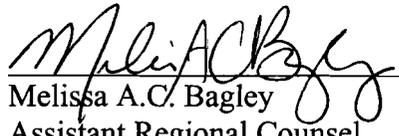
33. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (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.

34. This Order shall become effective upon the date of receipt by Respondent.

Issued this 4th day of June 2009.



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



Melissa A.C. Bagley
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th 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 the 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:

Mayor Chad Jackson
City of Maryville, Missouri
415 North Market Street
Maryville, Missouri 64468

Karl Fett
Director
Missouri Department of Natural Resources
Kansas City Regional Office
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710

Date

Signature