

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2016-0032
The City of Union, Missouri,)	
)	
)	
Respondent)	FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE
)	
Proceedings under Section 309(a) of the)	
Clean Water Act, 33 U.S.C. § 1319(a))	

Preliminary Statement

1. This Administrative Order for Compliance (“Order”) is issued by the United States 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 Union, 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 Union, 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 publicly owned treatment works (“POTW”) in Franklin County, Mo., which includes a sewage collection system, which receives wastewater from various domestic and non-domestic sources, and two wastewater treatment facilities (East and West “WWTFs”). 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. Both of the City’s WWTFs discharge to Bourbeuse River.

9. The City’s WWTFs are each a “point source” that “discharges pollutants” to “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 June 8, 2007, MDNR issued NPDES Permit No MO-0025283 to Respondent for the East WWTF. On or about August 12, 2005, MDNR issued NPDES Permit No MO-0121312 to Respondent for the West WWTF. These Permits, 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 15, 2011.

12. Section D of the NPDES Permit No. MO-0025283 (Special Conditions, at paragraph 2.d), 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, and Missouri Clean Water Commission regulations found at 10 C.S.R. 20-6.100.

13. Section E of the NPDES Permit No. MO-0121312 (Special Conditions, at paragraph 20), 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, and Missouri Clean Water Commission regulations at 10 C.S.R. 20-6.100.

14. 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 15, 2011, and legal authority found codified in the

City's municipal ordinances as City of Union, Wastewater Pretreatment Regulations, Chapter 710, *et.seq.* (hereafter "Code").

15. On or about May 11-12, 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 five Significant Industrial Users (SIUs) as defined at 40 C.F.R. 403.3(v), discharging to the POTW, with three SIUs subject to categorical federal standards, as defined at 40 CFR 403.6 and 40 CFR chapter I, subchapter N.

16. A copy of the Audit report was sent to MDNR and the City on or around July 29, 2015.

17. During the Audit, the EPA auditor interviewed City Pretreatment personnel, reviewed documents, including the City's Ordinance and records maintained by the City regarding its implementation of the Pretreatment Program.

Findings of Violation

Count 1

Failure to implement approved Pretreatment Program

18. The facts stated in Paragraphs 6 through 17 above, are hereby incorporated by reference.

19. 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 40 C.F.R. § 403.12(o), to maintain records, including the following:
 - i. The City did not maintain the Notices of Intent to discharge ("NOIs") submitted by Tops (formerly Esselte), Cloud Manufacturing, Pharma Tech Industries, and Kinsley and Sons; and
 - ii. The City does not maintain the self-monitoring records for its' SIUs to evaluate their compliance.
- b. Respondent failed, in violation of Code Ordinance Sections 710.220 and 40 C.F.R. § 403.8(f)(1)(iii), to properly permit their SIUs, including the following:
 - i. Gateway Extrusion is improperly permitted underneath 433.17 instead of the applicable 40 CFR Part 467;
 - ii. Categorical permits, Gateway Extrusion and Kinsley and Sons, do not include a requirement to develop and implement a solvent management plan in lieu of sampling for Total Toxics Organics;

- iii. Gateway Extrusion's permit does not define the outfall location of its' discharge;
 - iv. Local limits have been improperly applied as daily max and monthly average limits. Local Limits were only created for daily max limits;
 - v. SIU permits issued do not include effluent limits for pH; and
 - vi. Permits do not include standard conditions details (such as Confidential Business Information).
- c. Respondent failed, in violation of Code Ordinance Sections 710.200(C) and 40 C.F.R. § 403.8(f)(2)(vi), to evaluate whether each SIU needs an accidental discharge or slug control plan.
- d. Respondent failed, in violation of Code Ordinance Sections 710.190, 710.260-280, and 40 C.F.R. § 403.8(f)(2) and (f)(5), to implement an Enforcement Response Plan, including the following:
- i. 40 C.F.R. §§ 403.8(f)(2)(vii) and 403.8(f)(5)(i) and Code Ordinance Sections 710.270 and 710.280 of the City's Pretreatment Program, which require the City review reports from all Industrial Users ("IUs")(including SIUs) for timeliness, completeness and accuracy, and to investigate and document violations;
 - ii. 40 C.F.R. § 403.8(f)(5)(ii) and Code Ordinance Sections 710.270 and 710.280 which require the City to address violations by taking timely and, as appropriate, escalating enforcement actions,
 - iii. 40 C.F.R. § 403.8(f)(2)(viii) and Code Ordinance Sections 710.260 which require the City to use specific criteria to determine whether violations by IUs (including SIUs) represent significant noncompliance; and,
 - iv. 40 C.F.R § 403.8(f)(2)(viii) and Code Ordinance Sections 710.270 which require the City to identify and provide at least annual public notice of any of its SIUs that are in significant noncompliance ("SNC").

20. Respondent's violations identified in Paragraph 19 above are violations of the requirements of NPDES Permit No. MO-0025283 and MO-01121312 to implement the City's approved Pretreatment Program, and as such are violations of Sections 301(a), 307(d) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1317(d) and 1342, and regulations promulgated thereunder at 40 C.F.R. Part 403.

Order for Compliance

21. 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:

22. 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 SIUs. 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

23. Beginning May 28, 2016, Respondent shall submit to an initial report, and thereafter shall submit a report 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 36, 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 a 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

24. 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

25. 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.

26. 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

27. 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.

28. 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

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

Severability

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

Parties Bound

31. This Order shall apply to and be binding upon the Respondent, their 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

32. 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 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

33. 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

34. 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 Respondent. 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 Respondent requests 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

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

Termination

36. 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

4-5-16
Date:


Howard Burch
Assistant Regional Counsel
Office of Regional Counsel

4/5/2016
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 Administrative Order for Compliance on Consent to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

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:

The Honorable Mike Livengood
Mayor of Union
500 East Locust
Union, Missouri 63084

Paul Dickerson, Missouri Dept. of Natural Resources
Walter Fett, Missouri Dept. of Natural Resources

4-6-2016
Date


Signature