

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)	Docket No. CWA-07-2009-0121
)	
The City of Mexico, Missouri)	
Respondent)	
)	
NPDES Permit No. MO0036242)	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))	
)	

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 VII, and further delegated to the Director, Water, Wetlands and Pesticides Division.

II. Findings of Violation

1. The City of Mexico, Missouri ("City" or "Respondent"), is a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5). The City owns and operates a publicly owned treatment works ("POTW") for the treatment of domestic and industrial wastewater.
2. The POTW described in Paragraph 1 is a "point source" that discharges "pollutants" to the South Fork of the Salt River which is a "navigable water," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. The City is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 et seq.
3. 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.
4. 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. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

5. Respondent's Pretreatment Program was approved by MDNR on or about May 9, 1990. Respondent's approved Pretreatment Program sets forth procedures for implementing requirements for regulating industrial discharges to Respondent's POTW, specifically requirements set forth at 40 C.F.R. 403.8(f)(1), (f)(2) and (f)(5).

6. On or around May 5, 1993, MDNR approved Respondent's Enforcement Response Plan as a modification to the City's Pretreatment Program

7. On or about April 16, 2004, NPDES Permit No. MO0036242 was issued to Respondent by MDNR pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Permit was revised on or about June 6, 2008 and expired on April 15, 2009. The Permit remains in force under Missouri's administrative rules for the continuation of expired permits.

8. Section C (Special Conditions), Paragraph 7, of the Permit requires that the City shall implement its approved Pretreatment Program in accordance with the requirements of the General Pretreatment Regulations, 40 C.F.R. Part 403.

9. On or about December 2-3, 2008, EPA performed a Pretreatment Program Audit of the City's pretreatment implementation activities. During the Audit, EPA identified numerous program deficiencies. A report documenting these deficiencies was submitted to MDNR and the City of Mexico on or about January 26, 2009.

10. On March 31, 2009, the City submitted its Annual Pretreatment Report to MDNR. A copy was sent to EPA. The report documents Pretreatment implementation activities conducted by the city in calendar year 2008.

11. From the Pretreatment Audit and review of the Annual Pretreatment Report, EPA has determined that the City has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by violating its NPDES permit's requirement to implement the City's approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403.

12. The City has failed to implement its approved Pretreatment Program in at least the following ways:

a. In violation of 40 C.F.R. § 403.8(f)(2)(v), the City failed to inspect each of its Significant Industrial Users (SIUs) during calendar year 2008. Specifically, the City failed to inspect Archer Daniels Midland (ADM), Dawn Foods, and Cerro Copper

Casting during 2008.

b. In violation of 40 C.F.R. § 403.8(f)(5), the City failed to properly "implement [its] enforcement response plan." Specifically, Respondent's Enforcement Response Plan requires initial enforcement to commence within 20 days of receiving an SIU's monthly self-monitoring report that documents non-compliance. This time frame is often not met. Moreover, continuing violations are required to be addressed with a compliance schedule. During 2008, the City failed to issue any compliance schedules despite continued violations by two of its SIUs (TEVA Pharmaceuticals USA, Inc., and Dawn Foods (f/k/a Bunge Foods)).

c. In violation of 40 C.F.R. § 403.8(f)(2)(ii), the City failed to "control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements." Specifically, the City is unable to provide documentation of the re-issuance of a pretreatment permit to Cerro Copper that expired on July 31, 1998.

d. In violation of 40 C.F.R. § 403.8(f)(2)(vi), the City failed to collect samples "with sufficient care to produce evidence admissible in enforcement actions." Specifically, the City failed to always use chain of custody forms and sampling preservation sheets in a manner capable of supporting the validity of sampling/monitoring results.

e. In violation of 40 C.F.R. § 403.8(f)(3), the City failed to have "qualified personnel to carry out the authorities and procedures" required for implementation of the approved pretreatment program. Specifically, EPA's audit found that the City personnel did not know how to conduct an adequate industrial user inspection, were not familiar with the City's Enforcement Response Plan or Sewer Use Ordinance requirements, and did not know where all of its pretreatment records were stored.

III. Order for Compliance

Based on the foregoing FINDINGS and pursuant to the authority of Sections 308 and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318 and 1319(a)(3), Respondent, City of Mexico, Missouri, is hereby ORDERED AS FOLLOWS:

13. Immediately upon receipt of this Order, Respondent shall implement its Enforcement Response Plan, approved by MDNR on or about May 5, 1993. If Respondent elects to modify its Enforcement Response Plan, in accordance with procedures found in 40 C.F.R. Part 403 during the duration of this Order, a copy of the proposed modified Plan shall be sent to EPA for review and approval.

14. Respondent shall submit to EPA a copy of each SIUs' monthly self-monitoring report and any enforcement that City has taken addressing any violations documented by reports. Each report shall be submitted to EPA no later than the 15th day of the month following the preceding

monthly reporting period. The first report shall be due on November 15, 2009.

15. Immediately upon receipt of this Order, Respondent shall begin to properly collect samples of its SIUs in a manner that complies with the proper chain of custody and sample maintenance requirements and "with sufficient care to produce evidence admissible in enforcement actions." Documentation of chain of custody, sample maintenance and sampling methods shall be submitted to EPA no later than 30 days following the receipt of the results from the City's lab or a contract lab. All sampling by the City of its SIUs for calendar year 2010 shall occur during the duration of this Order (prior to the scheduled termination of the Order).

16. Within 45 days of receipt of this Order, Respondent shall issue a valid permit to Cerro Copper that contains the appropriate Categorical Pretreatment Standards found at 40 C.F.R. Part 464 (Metal Molding and Casting Point Source Category, Subpart B, Copper Casting Subcategory). Within 15 days of issuance of said permit to Cerro Copper by the City, a copy of the permit shall be submitted to EPA.

17. During the duration of this Order, Respondent will properly inspect and document the inspection of each of its SIUs. Copies of the inspection checklist and inspection reports and follow-up correspondence to each SIU shall be submitted to EPA within 30 days of each inspection.

18. During the duration of this Order, Respondent will provide training to its personnel that is sufficient for proper implementation of the City's approved Pretreatment Program. Respondent shall report to EPA the source, type of training, and the personnel that will receive the training

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

Paul T. Marshall
Pretreatment Coordinator
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

20. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 Act for any violation whatsoever.

21. Any deadline for compliance by Respondent set forth in this Order may be extended

by written approval by EPA without formal amendment to this Order. This Order will terminate one year and one month from the effective date, unless extended in writing by EPA.

22. This Order shall become effective upon the date of file stamping by the Regional Hearing Clerk, Region 7, United States Environmental Protection Agency.

Issued this 1st October day of ~~September~~, 2009.

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for William A. Spratlin, Director
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