

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 North 5th Street
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK
CWA-07-2004-0334

IN THE MATTER OF)
)
The City of Potosi, Missouri)
Respondent)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Docket No.

FINDINGS OF VIOLATION
AND ORDER FOR COMPLIANCE

I. Statutory Authority

This 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 or the Act), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA Region VII.

II. Background

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the Act, 33 U.S.C. § 1342. Section 402 of the Act 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.

2. 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 Act, implementing regulations, and a Memorandum of Understanding between EPA and MDNR, dated October 30, 1974. The EPA maintains concurrent authority with authorized state programs for violations of NPDES permits.

3. Section 405(d)(1) of the Act, 33 U.S.C. §1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

4. Pursuant to Sections 405(d)(1) of the Act, EPA promulgated the regulations governing the Standards for the Use or Disposal of Sewage Sludge, which are set forth at 40 C.F.R. Parts 501 and 503, on February 19, 1993. Said Standards became effective March 22, 1993. These regulations include record keeping and

reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

5. The State of Missouri has not been authorized to administer the Sludge Management Program, however, by an agreement between EPA Region VII and the State of Missouri, the MDNR has undertaken certain administrative functions of the program, including the establishment of sewage sludge disposal requirements pursuant to 40 C.F.R. Parts 501 and 503 in state issued NPDES permits. EPA remains responsible for enforcement of the requirements of the Federal Sludge Management Program until such time as the State would be authorized to administer the program in its entirety.

III. Findings of Violation

6. The City of Potosi, Missouri, (Respondent), a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), owns and operates a "treatment works treating domestic sewage" as defined by 40 C.F.R. §122.2. Respondent is therefore subject to the provisions of the Act.

7. Respondent generates "sewage sludge" that is used for "land application" on "agricultural land," as these terms are defined by 40 C.F.R. §§ 503.9(w), 503.11(h) and 503.11(a), respectively. Respondent land applies its sewage sludge at locations identified and numbered in each year's Form S – Annual Sludge report, due to MDNR by January 28 of each year.

8. On December 28, 2001, MDNR modified Respondent's NPDES Permit Number MO-0099732, to include the requirements for Sludge & Biosolids from Domestic Wastewater Treatment Facilities, incorporating the requirements of Section 405 of the Act, 33 U.S.C. § 1345, and the implementing federal regulations at 40 C.F.R. Part 503.

9. Respondent is required by its NPDES Permit Number MO-0099732 to submit an annual report to MDNR each year regarding its sludge activities for the preceding calendar year.

10. Pursuant to the requirements of 40 C.F.R. Part 503 and NPDES Permit Number MO-0099732, Respondent has submitted annual reports covering each of the calendar years 2000 through 2003. Each report contains summaries of Respondent's testing results and application information for sludge.

11. EPA is in receipt of the annual reports covering each of the calendar years 2000 through 2003.

12. On November 4 through 8, 2002, EPA performed an inspection of the Potosi wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). EPA's inspector documented observations of the operation of City of Potosi's POTW and performed sampling of the POTW's discharge. At the conclusion of the inspection, EPA's inspector left a Notice of Potential Violations with the operator of the POTW. To date, EPA has not received a response to the Notice of Potential Violations from the Respondent.

COUNT I

13. The facts stated in Paragraphs 1 through 12 are hereby incorporated by reference.

14. Pursuant to 40 C.F.R. § 503.33(b)(4), the specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius in order to meet this method of demonstrating vector attraction reduction.

15. Pursuant to 40 C.F.R. § 503.15(c)(1), Respondent is required to meet one of the vector attraction reduction methods listed in 40 C.F.R. § 503.33(b) at all times when applying bulk sewage sludge to agricultural land.

16. Respondent's annual report for calendar years 2000 through 2003 shows that the Respondent failed to meet the SOUR limit of 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) each time the test was performed as demonstrated below.

| | |
|-----------------------------|--------------------------|
| Calendar Year 2003 Results: | |
| April 2003 | 11.3 mg/Oxygen/hour/gram |
| November 2003 | 11.7 mg/Oxygen/hour/gram |
| Calendar Year 2002 Results: | |
| May 2002 | 5.96 mg/Oxygen/hour/gram |
| November 2002 | 3.75 mg/Oxygen/hour/gram |
| Calendar Year 2001 Results: | |
| April 2001 | 11.2 mg/Oxygen/hour/gram |
| May 2001 | 9.77 mg/Oxygen/hour/gram |
| November 2001 | 7.82 mg/Oxygen/hour/gram |
| Calendar Year 2000 Results: | |
| May 2000 | 7.0 mg/Oxygen/hour/gram |
| December 2000 | 11.7 mg/Oxygen/hour/gram |

17. Respondent's annual reports for calendar years 2000 through 2003 shows that sewage sludge was applied to agricultural land on 22 days in 2000, 9 days in 2001, 11 days in 2002 and 10 days in 2003.

18. EPA's November 4 through 8, 2002, inspection of the Potosi Wastewater Treatment Plant revealed that the City, upon failure of the SOUR tests, did not meet the Vector Attraction Reduction Requirements at 40 C.F.R. § 503.33 by an alternative method such as incorporating or injecting the sludge into the soil.

19. Respondent's failure to demonstrate compliance with 40 C.F.R. § 503.33 and 40 C.F.R. § 503.15 is a violation of Respondent's NPDES permit and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

COUNT II

20. Pursuant to 40 C.F.R. § 503.32(b), sewage sludge classified as Class B, with respect to pathogens, shall not have a geometric mean of fecal coliform of greater than 2,000,000 colonies /gram (col/g).

21. Pursuant to 40 C.F.R. § 503.15(a)(1), Respondent is required to meet one of the Class B pathogen requirements of 40 C.F.R. § 503.32(b)(2) through (4), and the site restriction requirements of 40 C.F.R. § 503.32(b)(5) at all times when applying bulk sewage sludge to agricultural land.

22. Respondent's annual report for calendar year 2001 shows that the respondent failed to meet the fecal coliform geometric mean requirements of 40 C.F.R. § 503.32(b) as demonstrated by samples taken on November 1, 2001. The annual report indicates that laboratory analysis of the Respondent's sludge of a sample taken on November 1, 2001 was 2,950,000 col/g.

23. During the period in 2001 and 2002 until another fecal coliform sample was taken that met the requirements in 40 C.F.R. § 503.32, Respondent land applied sludge on at least two occasions.

24. Respondent's failure to demonstrate compliance with 40 C.F.R. § 503.32 and 40 C.F.R. § 503.15 is a violation Respondent's NPDES permit and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations of the CWA.

IV. Order for Compliance

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

1. Immediately upon receipt of this Order, Respondent shall comply with the requirements of 40 C.F.R. Part 503, including, but not limited to meeting the Vector Attraction Reduction Requirements at 40 C.F.R. Part 503.33 and the Pathogen Requirements at 40 C.F.R. § 503.32(b) and the Operational Standards at 40 C.F.R. § 503.15.

2. Within thirty (30) days of receipt of this order Respondent shall develop and submit to EPA Region VII for approval a work plan that will detail policy and procedures for ensuring that all land applied sludge meets the applicable regulations listed above.

3. Within thirty (30) days of receipt of this Order Respondent shall develop and submit to EPA Region VII a sampling plan of its sludge. The sampling plan shall be subject to review and approval in accordance with Paragraph 4 below.

4. All documents required to be submitted to EPA Region VII for review and approval by this Order for Compliance shall be submitted to the addresses listed in paragraph 2 below. Respondent shall upon receipt of comments from EPA:

- (a) if directed to modify the document by EPA's response, resubmit the document with such modifications to EPA Region VII within fifteen (15) days of receipt of EPA's comments (or such other time as directed in writing by EPA); and
- (b) when directed by EPA's response, execute the provisions of the document as directed by this Order.

V. General Provisions

1. The provisions of this Order are severable. If any provision of this Order is determined to be unenforceable, the remaining provisions shall remain in full force and effect.

2. All correspondence, documents and reports required to be submitted pursuant to this Order to EPA or MDNR shall be sent to the following:

Cynthia Sans
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

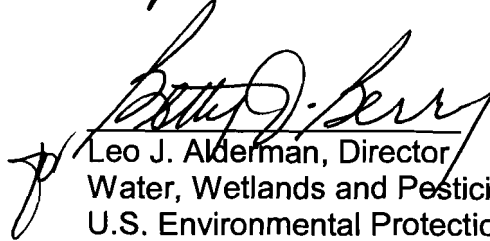
Mr. Kevin Mohammadi, Chief
Enforcement Section
Bureau of Water
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

3. 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 Act, 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.

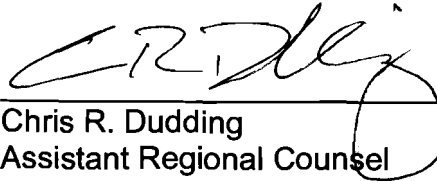
4. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

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

Issued this 24th day of, September 2004.



Leo J. Alderman, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101



Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
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 and correct copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

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 Administrative Order for Compliance to:

The Honorable Wayne Malugen
Mayor of the City of Potosi
121 E. High Street
Potosi, Missouri 63664

Mr. Kevin Mohammadi, Chief
Enforcement Section
Bureau of Water
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

9/27/04
Date

Debby White

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Enforcement Section, Bureau of Water
Missouri Dept. of Natural Resources
PO Box 176
Jefferson City, Missouri 65102

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PS Form 3800, April 2002 See Reverse for Instructions

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Sent To The Honorable Wayne Malugen
Mayor of the City of Potosi
121 E. High Street
Potosi, Missouri 63664

Street, Apt. No. or PO Box No
City, State

PS Form 3800, April 2002 See Reverse for Instructions