

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARINGS CLERK

IN THE MATTER OF)
)
)
THE CITY OF ALBANY,)
MISSOURI)
)
Respondent)
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Docket No. CWA-07-2008-0011

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

I. Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region VII, and further delegated to the Director of Region VII’s Water, Wetlands and Pesticides Division.

2. The City of Albany, Missouri, (hereafter “Respondent” or “City”) owns and operates a publicly owned treatment works (“POTW”) that treats municipal and industrial wastewater at a wastewater treatment facility (“WWTF”).

II. 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, 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 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.

5. Pursuant to the authority of Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

6. On October 30, 1974, the Missouri Department of Natural Resources (“MDNR”) was authorized as 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 (including implementing regulations). EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

III. Findings of Fact

7. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. Respondent owns and operates a POTW, which receives and treats wastewater from various domestic and industrial sources. The POTW treats wastewater through a 9-acre primary lagoon, a 2.7-acre secondary cell, and an aeration basin.

9. Respondent’s POTW is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

10. Respondent’s POTW causes the “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

11. Respondent’s POTW discharges pollutants into the Town Branch Stream (U) which flows into the classified stream of the East Fork of the Grand River (P) (00457). The Town Branch Stream and the East Fork of the Grand River are each a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

13. In August 2004, the MDNR inspected Respondent’s POTW and found that the POTW had been in regular non-compliance with limits for Biological Oxygen Demand (“BOD”) and Total Suspended Solids (“TSS”). Respondent was instructed by MDNR to comply with the permit’s numeric limits and to repair a fence and signage around the lagoon.

14. MDNR issued Respondent a NPDES permit, No. MO-0021466, effective December 14, 2007, for discharges of wastewater from its POTW into the Town Branch Stream. The NPDES permit was revised on April 11, 2008 and expires on December 13, 2012. The April 2008 revisions included limits for oil and grease and fecal coliform.

15. On February 5, 2008, EPA performed an inspection of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "EPA's inspection"). EPA's inspector again reviewed the POTW's compliance and found that non-compliance with the NPDES permit's limits for BOD and TSS had continued through 2007. EPA's inspection found that Respondent had failed to maintain proper fencing, warning signs and security around its wastewater treatment lagoon. EPA's inspection also found that Respondent had failed to properly manage (remove) solids in lagoons in a manner that allowed for the proper treatment of wastewater and compliance with the permit's effluent limits. EPA issued Respondent a Notice of Violation ("NOV") following the inspection.

16. On or about November 7, 2008, EPA contacted the City and was informed that the City had not yet corrected the POTW's lagoon's fencing and signage, and also had not yet removed biosolids from the lagoon.

IV. Findings of Violation

Failure to Comply with Effluent Violations

17. Section A (Effluent Limitations and Monitoring Requirements) of Respondent's NPDES permit establishes specific numeric limits for specified pollutants, including TSS, BOD, ammonia, and fecal coliform. Between 2004 and 2007, Respondent was in regular non-compliance with the POTW's permit limits for BOD (25 of 48 months) and TSS (19 of 48 months). Respondent's failures to comply with the limits are violations of Respondent's NPDES permit, and as such, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and the implementing regulations of the CWA.

Failure to Comply with Proper Security Measure

18. Part 1, Section B.15 (General Conditions, Management Responsibilities, State Laws) of Respondent's NPDES permit and 10 CSR 20-8.200 A(A) & (C) both require Respondent to properly maintain fencing, warning signs and security. Respondent's failure to comply with these requirements are violations of Respondent's NPDES permit, and as such, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations of the CWA.

Failure to Properly Manage Solids in Lagoons

19. Part 1, Section E.7 (Special Conditions, Sludge and Biosolids use for domestic wastewater treatment facilities) of Respondent's NPDES permit requires Respondent to properly operate and maintain the POTW in a manner that will achieve compliance with the limitations within the permit. Respondent's failure to properly manage solids in the lagoon constitutes a violation of this requirement and is a violation of Respondent's NPDES permit, and as such, a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations of the CWA.

V. Order For Compliance

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. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below in paragraphs 20 through 22.

20. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written report to EPA describing the specific actions previously taken to correct the violations cited herein, and an explanation of why such actions are anticipated to be sufficient to prevent future recurrence of the cited violations.

21. Within thirty (30) days of the effective date of this Order, Respondent shall provide EPA a proposed compliance schedule to address the cited violations, which shall include the following:

- a. A schedule for completion of the repair of the fence and signage around the lagoon, no later than ninety (90) days after the effective date of this Order; and
- b. A schedule for proper solids management from the POTW's lagoons, in compliance with the requirements of 40 C.F.R. Part 503, no later than one hundred and twenty (120) days after the effective date of this Order.

EPA may modify Respondent's proposed compliance schedule, as detailed above, by written notification to Respondent, without further amendment to this Order.

22. Respondent shall submit to EPA and MDNR a quarterly Compliance Report (due on August 15, November 15, February 15, and May 15) that provides copies of all monitoring and sampling information conducted pursuant to the POTW's NPDES permit in the prior calendar quarter (January – March, April – June, July – September, October – December). The quarterly Compliance Report shall also include a detailed description of all solids removal and maintenance of the lagoon performed during the prior quarter. This reporting obligation shall continue until Reports documenting four (4) complete quarters of monitoring have been submitted, unless Respondent is notified in writing by EPA that the reporting requirement has been extended. Any such notification by EPA shall specify the period for additional reporting and shall not require further amendment to this Order.

Submissions

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

Robert W. Bryant
(WWPD-WENF)
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

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

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

and

Mr. Kevin Mohammadi
Missouri Department of Natural Resources
205 Jefferson Street
(PO Box 176)
Jefferson City, Missouri 65102

VI. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

25. 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.

26. 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.

Access and Requests for Information

27. 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

28. 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.

Effective Date

29. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Issued this 19th day of December, 2008.



William Spratlin

Director

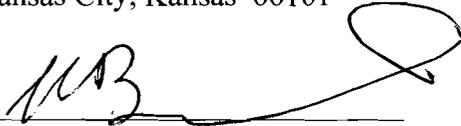
Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency

Region VII

901 North Fifth Street

Kansas City, Kansas 66101



Howard Bunch

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency

Region VII

901 North Fifth 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 these 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:

The Honorable Steve Findley
Mayor of the City of Albany
City Hall
106 East Clay
Albany, Missouri 64402

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

and

Mr. Kevin Mohammadi
Missouri Department of Natural Resources
205 Jefferson Street
(PO Box 176)
Jefferson City, MO 65102



Name:

Title:

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