

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

IN THE MATTER OF:) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
City of Fulton, Missouri)
18 East 4th Street)
Fulton, Missouri 65251)
)
Proceedings under Section 309(a)(3)) Docket No. CWA-07-2008-0020
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

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 Fulton, Missouri (hereafter “Respondent” or “City of Fulton”) owns and operates a publicly owned treatment works (“POTW”) that treats domestic, commercial, and industrial wastewater.

3. The Missouri Department of Natural Resources (“MDNR”) is the agency within the State of Missouri that has been authorized to administer the federal National Pollutant Discharge Elimination System (“NPDES”) program pursuant to Section 402 of the CWA and its implementing regulations. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA pursuant to Section 309(g) and 402(i) of the CWA, 33 U.S.C. § 1319(g) and § 1342(i).

II. Jurisdiction and General Allegations

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, permits issued under the authority of 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 NPDES permit issued pursuant to that Section.

5. The Respondent, City of Fulton, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all relevant times, Respondent has owned and operated a wastewater treatment plant ("WWTP") and its associated sewer and stormwater collection and transmission system, which receive and treat wastewater and stormwater runoff from residential and commercial connections within the City of Fulton, Missouri and Callaway County, Missouri.

9. Respondent's WWTP and corresponding collection system include approximately 95 miles of sewer line and 20 lift stations. This collection system services a population of approximately 12,000, which includes 3555 residential connections, 578 commercial connections, and 13 industrial connections to sanitary sewer lines.

10. At all relevant times, Respondent has "discharged pollutants" from its POTW within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6) and (12), from "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to waters of the United States, including a tributary to the Missouri River, Stinson Creek, and its associated tributaries, within the meaning of 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

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

12. On October 16, 17, 18, and 19, 2006, an EPA representative performed an inspection of the Respondent's facilities under the authority of Section 308(a) of the CWA, 33 U.S.C. §1318(a). Included in the inspection were (1) a facility walk through of the wastewater treatment facilities; (2) observation of the Respondent's POTW; and (3) a review of laboratory procedures, facility records, and recordkeeping procedures.

13. At all relevant times, Respondent's NPDES permit for the WWTP has authorized Respondent to discharge pollutants only from specified point sources, identified in the permit as one or more numbered "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permits.

14. Within the past five years, Respondent has experienced discharges of untreated wastewater from lift stations and/or other locations within the Respondent's wastewater collection system, also known as sanitary sewer overflows. None of the locations of these discharges are numbered outfalls identified in Respondent's NPDES permits.

15. Respondent's unpermitted discharges from its POTW have resulted from multiple causes, including poor operation maintenance of its collection system and blockages at primarily Route O Lift Station.

16. Each discharge of pollutants as identified in Paragraphs 14 and 15 above is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the

CWA, 33 U.S.C. § 1342, for Duckett Creek Sanitary District, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

III. Findings of Violation

Unpermitted Discharges from Sanitary Sewer System

17. Paragraphs 1-16 are realleged and incorporated herein by reference.

18. On at least nine (9) different occasions, between at least November 2005 and October 2006, and upon information and belief continuing to the present, Respondent has discharged pollutants from point sources within its separate sanitary sewer collection and transmission system, including without limitation, Route O Lift Station, that were not identified in its NPDES permits as authorized outfalls (hereinafter referred to as “sanitary sewer overflows” or “SSOs”). These SSOs are not permitted or otherwise authorized by the CWA.

19. Each day of each discharge referred to in Paragraph 18 constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violation of Proper Operation and Maintenance Condition (Standard Condition I.B.3&4) in Respondent’s NPDES Permits

20. Paragraphs 1-16 are realleged and incorporated herein by reference.

21. Pursuant to 40 C.F.R. § 122.41(e), each of Respondent’s NPDES Permits contains the following Standard Condition at Part I.B.3: “Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions. Operators or supervisors of operations at publicly owned or publicly regulated wastewater treatment facilities shall be certified in accordance with 10 CSR 209.020(2) and any other applicable law or regulation.” Part I.B.4 of each of Respondent’s NPDES Permits require that “the permittee shall take all necessary steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit or set forth in the Missouri Clean Water Law and Regulation . . .” (hereafter Part I.B.3&4 collectively referred to as “Proper Operation and Maintenance Condition”).

22. Many of the illegal discharges alleged in Paragraph 18 above, resulted, in whole or in part, from Respondent’s failure to comply with the Proper Operation and Maintenance Condition in Respondent’s NPDES permits (Part I.B.3&4), in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

23. Each day Respondent failed to comply with the Proper Operation and Maintenance Condition of its NPDES permits (Part I.B.3&4) constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Violation of the General Criteria Special Condition in Respondent's NPDES Permits

24. Paragraphs 1-16 are realleged and incorporated herein by reference.

25. All of Respondent's past and current NPDES Permits contain the following General Criteria Special Condition:

The following water quality criteria shall be applicable to all waters of the state at all times including mixing zones. No water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting the following conditions:

- (a) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses;
- (b) Water shall be free from oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses;
- (c) Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses;
- (d) Waters shall be free from substances or conditions in sufficient amounts to result in toxicity to human, animal or aquatic life;
- (e) There shall be no significant human health hazard from incidental contact with the water;
- (f) There shall be no acute toxicity to livestock or wildlife watering;
- (g) Waters shall be free from physical, chemical or hydrological changes that would impair the natural biological community; and
- (h) Waters shall be free from used tires, car bodies, appliances, demolition debris, used vehicles or equipment and solid waste as defined in Missouri's Solid Waste Law, section 260.200, RSMO, except as the use of such materials is specifically permitted pursuant to section 260.200-247.

26. The EPA inspection described in paragraph 12 revealed that many of the unpermitted discharges alleged in Paragraph 18 contained untreated sewage, debris, blankets and plastics, thereby creating conditions whereby the receiving waters contained one or more of the following: putrescent, unsightly, or harmful bottom deposits; scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses; substances

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resulting in unsightly color, turbidity and offensive odor; and physical, chemical and/or hydrologic changes that would impair the natural and biological community.

27. On each occasion described in Paragraph 26 above, and upon information and belief continuing to the present, Respondent failed to comply with the General Criteria Special Conditions of its NPDES Permits in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

28. Each day Respondent failed to comply with the General Criteria Special Condition of its NPDES Permits constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

IV. Order for Compliance

29. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in Paragraphs 30 through 31.

30. Within 60 days of the issuance of this Order, the Respondent shall submit to EPA for review and approval a detailed Plan of Action (POA) with the goal to eliminate SSO events at Route O Lift Station. The POA shall contain an implementation schedule and completion date.

31. Within 30 days of receipt of EPA's comment on the POA, the Respondent shall modify the POA accordingly and shall immediately implement the POA.

Submissions

32. All documents required to be submitted to EPA by this Order, shall be submitted by mail to **Ms. Berla Johnson, Compliance Officer**, at the following address:

U.S. Environmental Protection Agency – Region VII
Water, Wetlands and Pesticides Division
901 N. 5th Street
Kansas City, Kansas 66101.

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

and

Irene Crawford
Director, Northeast Regional Office
Missouri Department of Natural Resources
1079 Prospect Drive
Macon, MO 63552

Certification

34. All submissions made by Respondent to EPA and MDNR pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.22:

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.

V. General Provisions

Effect of Compliance with the terms of this Order for Compliance

35. 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.

36. 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.

Access and Requests for Information

37. 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

38. 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

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

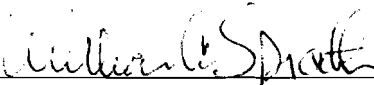
Termination

40. Within ninety (90) days after Respondent has satisfied the terms of this Order by establishing, and successfully implementing for a period of twelve (12) months, all the operation and maintenance improvements and programs and other requirements in this Order as set forth in Paragraphs 30 through 31, Respondent shall submit for EPA review and approval a final report ("Final Report") that includes a description of all of the actions which have been taken toward achieving compliance with this Order, an assessment of the effectiveness of such actions in preventing SSOs, and an analysis of whether additional actions beyond the scope of this Order are necessary to further eliminate SSOs. EPA shall use its best efforts to expeditiously review the Final Report. If EPA determines that Respondent has provided a satisfactory Final Report as required above and has satisfied the terms of this Order as set forth above, EPA will provide notice to Respondent, and this Order shall be deemed terminated. If EPA determines that the Final Report is not satisfactory or that Respondent has not satisfied any term of this Order as set forth above, EPA will notify Respondent and provide a list of the deficiencies which may include but not be limited to a requirement that Respondent modify an operation and maintenance program as appropriate in order to correct a deficiency. In this event, Respondent shall correct such deficiencies, immediately implement such corrections, and shall submit a modified Final Report for review and approval in accordance with the EPA notice.

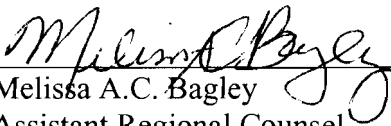
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 28th day of November 2007.



William A. Spratlin, Director
Water, Wetlands and Pesticides Division



Melissa A.C. Bagley
Assistant Regional Counsel

IN THE MATTER OF City of Fulton, Missouri, Respondent
Docket No. CWA-07-2008-0020

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings of Violation, Order for Compliance was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Melissa A.C. Bagley
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

The Honorable Charles M. Latham
Mayor
City of Fulton
2010 William Woods Avenue
Fulton, Missouri 65251

Copy by First Class Mail to:

Kevin Mohammadi
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Irene Crawford
Director, Northeast Regional Office
Missouri Department of Natural Resources
1079 Prospect Drive
Macon, Missouri 63552

Dated: 11/29/07



Kathy Robinson
Hearing Clerk, Region 7