

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: ) FINDINGS OF VIOLATION AND  
) ORDER FOR COMPLIANCE  
City of Bismarck, Missouri )  
)  
A Municipality )  
) Docket No. CWA-07-2010-0051  
Proceedings under Section 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3) )  
\_\_\_\_\_ )

**Background and Findings of Violation**

**Jurisdiction**

1. The FINDINGS OF VIOLATION are made and the 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), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. EPA is alleging that the City of Bismarck, Missouri discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

**Parties**

3. The Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA, Region 7, is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. Respondent, the City of Bismarck, Missouri (hereafter "Respondent" or "Bismarck"), operates a Publicly Owned Treatment Works ("POTW") in the State of Missouri ("Missouri") that treats domestic, commercial, and industrial wastewater.

**Statutory and Regulatory Framework**

5. 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.

6. 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.

7. To implement 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.

8. The Missouri Department of Natural Resources (“MDNR”) is 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, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### Findings of Fact

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

10. Bismarck’s POTW discharges to an unnamed tributary of Flat River Creek.

11. The POTW is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

12. Respondent’s wastewater treatment facility (“WWTF”) and corresponding collection system include approximately 8.5 miles of sewer line and five lift stations. This collection system services a population of approximately 1,500.

13. 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 an unnamed tributary to Flat River Creek, within the meaning of 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

15. On February 4, 2005, MDNR granted NPDES permit No. MO-0022942, (hereafter “NPDES permit”), to the Respondent for discharges from the Bismarck Wastewater Treatment Plant (“WWTP”) to an unnamed tributary to Flat River Creek, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of February 3, 2010 and has been administratively extended.

16. 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 permit.

17. Pursuant to 40 C.F.R. § 122.41(e), Respondent's NPDES Permit 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 Respondent's NPDES Permit requires that "[t]he 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").

18. Part A. Effluent Limitations and Monitoring Requirements of Respondent's NPDES permit includes the following limits for discharges from outfall #002 to the unnamed tributary of Flat River Creek, effective upon issuance:

- a. Five-Day Biochemical Oxygen Demand ("BOD<sub>5</sub>") shall be limited to a weekly average of 45 milligrams per liter ("mg/L") and a monthly average of 30 mg/L;
- b. Total Suspended Solids ("TSS") shall be limited to a weekly average of 45 mg/L and a monthly average of 30 mg/L; and
- c. Minimum removal of 85% required for BOD<sub>5</sub> and TSS.

19. On January 27 through January 30, 2009, EPA performed an inspection of the Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "Inspection").

20. On October 8, 2009, a subsequent Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, was issued to Bismarck. The Request for Information requested documentation of the compliance with its NPDES permit and the CWA. On or about October 29, 2009, Bismarck provided its response to the Request for Information.

21. During the Inspection, the EPA inspector conducted a walk through of Respondent's WWTP, conducted a sampling inspection of each of the WWTP's outfalls, and collected additional information regarding the collection system and operation and maintenance programs. The EPA inspector documented his findings regarding Bismarck's compliance with its NPDES permits and the CWA, as follows:

- a. Based on a review of Respondent's discharge monitoring reports ("DMRs"), Respondent's WWTP exceeded the NPDES permit limitations for BOD<sub>5</sub> at Outfall #002 as follows:

Date of Violation	Effluent Limit	Reported Effluent Limit	Percent Exceedance
January 2008	45 mg/L	77 mg/L	71%
January 2008	30 mg/L	77 mg/L	157%
July 2008	30 mg/L	41 mg/L	37%
August 2008	30 mg/L	42 mg/L	40%
October 2008	45 mg/L	91 mg/L	102%
October 2008	30 mg/L	91 mg/L	203%
November 2008	45 mg/L	48 mg/L	7%
November 2008	30 mg/L	48 mg/L	60%
December 2008	30 mg/L	45 mg/L	50%
January 2009	45 mg/L	95 mg/L	111%
January 2009	30 mg/L	95 mg/L	217%
February 2009	45 mg/L	91 mg/L	102%
February 2009	30 mg/L	91 mg/L	203%
March 2009	45 mg/L	76 mg/L	69%
March 2009	30 mg/L	76 mg/L	153%

- b. Based on a review of Respondent's discharge monitoring reports ("DMRs"), Respondent's WWTP exceeded the NPDES permit limitations for TSS at Outfall #002 as follows:

Date of Violation	Effluent Limit	Reported Effluent Limit	Percent Exceedance
January 2008	45 mg/L	91 mg/L	102%
January 2008	30 mg/L	91 mg/L	203%
August 2008	45 mg/L	99 mg/L	120%

August 2008	30 mg/L	99 mg/L	230%
October 2008	45 mg/L	121 mg/L	169%
October 2008	30 mg/L	121 mg/L	303%
November 2008	45 mg/L	156 mg/L	247%
November 2008	30 mg/L	156 mg/L	420%
December 2008	45 mg/L	73 mg/L	62%
December 2008	30 mg/L	73 mg/L	143%
January 2009	45 mg/L	133 mg/L	196%
January 2009	30 mg/L	133 mg/L	15%
February 2009	45 mg/L	74 mg/L	64%
February 2009	30 mg/L	74 mg/L	147%
March 2009	45 mg/L	111 mg/L	147%
March 2009	30 mg/L	111 mg/L	270%

c. Based on a review of Respondent's DMRs, Respondent's WWTP exceeded the NPDES permit limitations for minimum removal of 85% required for BOD<sub>5</sub> and TSS as follows:

Date of Violation	Applicable Reported Influent (mg/L) / Reported Effluent Limit (mg/L)	Calculated Percent Removal
April 2007	BOD <sub>5</sub> : 150 / 24	BOD <sub>5</sub> : 84%
October 2007	TSS: 107 / 28	TSS: 74%
November 2007	TSS: 167 / 29	TSS: 83%
January 2008	BOD <sub>5</sub> : 203 / 77 TSS: 120 / 91	BOD <sub>5</sub> : 62% TSS: 24%

August 2008	BOD <sub>5</sub> : 133 / 42 TSS: 95 / 99	BOD <sub>5</sub> : 68% TSS: (4% gain)
September 2008	BOD <sub>5</sub> : 154 / 27 TSS: 91 / 19	BOD <sub>5</sub> : 83% TSS: 79%
October 2008	BOD <sub>5</sub> : 181 / 91 TSS: 137 / 121	BOD <sub>5</sub> : 50% TSS: 12%
November 2008	BOD <sub>5</sub> : 235 / 48 TSS: 152 / 156	BOD <sub>5</sub> : 80% TSS: (3% gain)
December 2008	BOD <sub>5</sub> : 86 / 45 TSS: 65 / 73	BOD <sub>5</sub> : 48% TSS: (12% gain)
January 2009	BOD <sub>5</sub> : 137 / 95 TSS: 109 / 133	BOD <sub>5</sub> : 31% TSS: (22% gain)
February 2009	BOD <sub>5</sub> : 163 / 91 TSS: 127 / 74	BOD <sub>5</sub> : 44% TSS: 42%
March 2009	BOD <sub>5</sub> : 85 / 76 TSS: 96 / 111	BOD <sub>5</sub> : 11% TSS: (16% gain)
April 2009	BOD <sub>5</sub> : 65 / 11	BOD <sub>5</sub> : 83%
May 2009	BOD <sub>5</sub> : 150 / 28	BOD <sub>5</sub> : 81%
June 2009	BOD <sub>5</sub> : 160 / 27	BOD <sub>5</sub> : 83%

22. Within the past five years, Respondent has experienced discharges of untreated wastewater from locations within the Respondent's wastewater collection system, (hereinafter referred to as "sanitary sewer overflows" or "SSOs"). None of the locations of these discharges are numbered outfalls identified in Respondent's NPDES permits.

23. Specifically, Respondent notified MDNR of SSOs, which occurred on November 1, 2005, July 19, 2006, November 27, 2008, February 11, 2009, April 20, 2009, April 28, 2009, and October 23, 2009.

24. Respondent's unpermitted discharges from its POTW have resulted from multiple causes, including excessive inflow and infiltration within the collection system and Respondent's failure to comply with the Proper Operation and Maintenance Condition in Respondent's NPDES permits (Part I.B.3&4)

### **Findings of Violation**

25. Respondent violated its NPDES permit by failing to comply with the effluent limitations for BOD<sub>5</sub> during the time periods identified in Paragraph 21, subparagraph (a), above.

26. Respondent violated its NPDES permit by failing to comply with the effluent limitations for TSS during the time periods identified in Paragraph 21, subparagraph (b), above.

27. Respondent violated its NPDES permit by failing to comply with the minimum removal of 85% required for BOD<sub>5</sub> and TSS during the time periods identified in Paragraph 21, subparagraph (c), above.

28. Respondent violated Section 301 of the CWA by the discharge of SSOs as identified in Paragraphs 22 and 23, above. Additionally, the SSOs are a violation of Respondent's NPDES permit by failing to comply with the Proper Operation and Maintenance Condition.

29. Respondent's unpermitted discharges and violations of the requirements of its NPDES Permit, as identified in Paragraphs 21 (a), (b), and (c), 22, 23, and 24, constitute violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

### **Order for Compliance**

30. 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.

31. Immediately upon the Effective Date of this Order, Respondent shall take whatever actions are necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permit.

32. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide EPA a proposed Compliance Plan, for EPA's review and approval, which shall describe in detail how Respondent intends to eliminate future violations of its NPDES permit. At a minimum, the proposed Compliance Plan shall include:

- a. A description of actions Respondent proposes to undertake at the POTW to eliminate effluent violations;

- b. A description of actions Respondent proposes to undertake to eliminate SSO events related to the excessive inflow and infiltration within Respondent's collection system;
- c. A schedule for implementation of the proposed modification(s) as soon as practicable, but in no event later than the following schedule set forth below:

By December 31, 2010, Respondent shall submit an Engineering Report and submit a request for a construction permit, to MDNR for its approval and to EPA for its review and comment;

By March 1, 2011, Respondent shall begin construction and/or implementation of the modifications; and

By December 31, 2012, Respondent shall have completed construction of the modifications.

- d. The schedule described above shall include interim milestones on a quarterly basis;
- e. A schedule for quarterly reports to be submitted describing the actions taken during the previous quarter and milestones met (e.g. January 28, April 28, July 28, and October 28); and
- f. A description of the funding measures necessary to implement the proposed modification(s) included within the Compliance Plan.

33. EPA will review the proposed Compliance Plan, as described in Paragraph 32 above, and notify Respondent in writing of EPA's approval, disapproval, or modification of the submittal, or any part thereof. Upon receipt of EPA's approval or notice of modification(s), Respondent shall commence work and implement any approved submittal in accordance with the schedule and provisions contained therein. Upon receipt of EPA's disapproval, Respondent shall modify the Compliance Plan to address EPA's disapproval and resubmit to EPA within thirty (30) days of EPA's disapproval. EPA approved submittals shall be deemed incorporated into and enforceable as part of this Order.

34. For one year from the effective date of this Order, Respondent shall submit to EPA on a quarterly basis, monthly Discharge Monitoring Reports ("DMRs"). The DMRs shall be submitted no later than the 28<sup>th</sup> day of the month following the end of the calendar quarter (e.g., January 28, April 28, July 28, and October 28). Respondent shall also submit to EPA a copy of any report of an SSO sent to MDNR as required by Respondent's NPDES permit. Respondent may submit the requests required by both Paragraph 32c, above, and this paragraph together.



35. With each submittal to EPA pursuant to the requirements of this Order the Respondent shall include a written statement signed by a principal executive officer or ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

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 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 violations.

#### Submissions

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

Robert Bryant  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

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

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

Gary Gaines  
Director  
Missouri Department of Natural Resources  
Southeast Regional Office  
2155 North Westwood Boulevard  
Poplar Bluff, Missouri 63901.

## **General Provisions**

### **Effect of Compliance with the Terms of this Order for Compliance**

38. 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 correct the violations described above, including but not limited to actions to protect the health or welfare of persons or the environment, or 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.

39. This Order does not constitute a waiver or a modification of any requirements of the CWA, 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 Section 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**

40. 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**

41. 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**

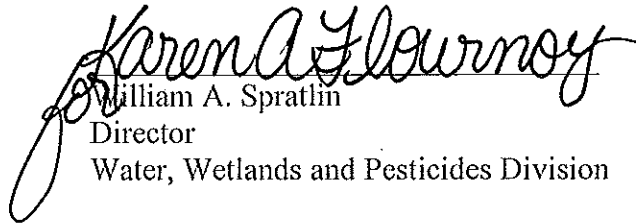
42. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Order.

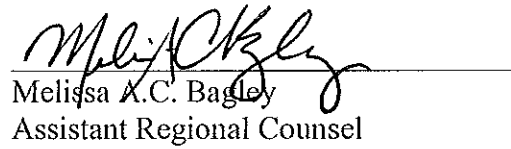
### **Termination**

43. 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.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 22nd day of September, 2010.

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

  
\_\_\_\_\_  
Melissa A.C. Bagley  
Assistant Regional Counsel

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 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:

Dennis Mayberry  
Mayor  
City of Bismarck, Missouri  
924 Center Street  
Bismarck, Missouri 63624.

9/24/10

Date

Jaraha Moreno