

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
The City of St. Clair, Missouri,) Docket No. CWA-07-2011-0119
)
Respondent.) 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

1. 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), which authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, Region 7.

2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 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. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works ("POTW").

3. The Missouri Department of Natural Resources ("MDNR") is the state agency within the State of Missouri that has been authorized by EPA to administer the federal NPDES and Pretreatment programs pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and applicable implementing regulations, including 40 C.F.R. Part 403. As such, the MDNR is the Approval Authority for the Pretreatment Program in Missouri.

4. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

II. General Factual and Legal Allegations

5. The City of St. Clair, Missouri, (hereafter “City” or “Respondent”), is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all times relevant, Respondent was, and still is, the owner and/or operator of a POTW in Franklin County, Missouri, that includes a wastewater treatment plant (“WWTP”) and sewage collection system, which receive wastewater from various domestic and non-domestic source. As defined by 40 C.F.R. § 403.3(q), a POTW includes but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

7. The POTW discharges to Happy Sock Creek and thereafter to Bourbeuse River.

8. The City’s POTW is a “point source” that “discharges pollutants” to “navigable water” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

10. On or about December 2, 2005, MDNR issued NPDES Permit No. MO0099465 (“Permit”) to Respondent pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Permit was reissued by MDNR on or about February 10, 2011.

11. Respondent’s Pretreatment Program was approved by MDNR on or about October 3, 1988.

12. Section D, Special Conditions, Paragraph 9, of the City’s 2011 Permit requires the City to implement and enforce its approved Pretreatment Program in accordance with the requirements of the General Pretreatment Regulations, 40 C.F.R. Part 403.

13. Respondent’s approved Pretreatment Program includes, but is not limited to, a description of the Pretreatment Program from October 1998, an Enforcement Response Plan (“ERP”), which was approved by MDNR on or around February 24, 2000, and legal authority to administer the program adopted and revised as City of St. Clair, Missouri Wastewater Pretreatment Regulations, Chapter 24, Division 2, Section 24-130, *et seq.* (hereafter “Code”), approved by MDNR on or around September 21, 1998.

14. The City's approved Pretreatment Program identifies program elements and procedures for regulating industrial users ("IUs") that discharge to Respondent's POTW, as required by 40 C.F.R. Part 403, including:

- a. Procedures to implement the Pretreatment program (40 C.F.R. §§ 403.5 and 403.8(f)(2)):
 - i. Code Section 24-144 implements 40 C.F.R. § 403.8(f)(2)(i), requiring the City to identify and locate all possible IUs which might be subject to the POTW Pretreatment Program;
 - ii. Code Section 24-145 implements 40 C.F.R. § 403.8(f)(1)(iii), authorizing the City to control through permit, order, or similar means the contribution to the POTW by each IU to ensure compliance with applicable Pretreatment Standards and Requirements;
 - iii. Code Sections 24-172 and 173 implement 40 C.F.R. § 403.8(f)(2)(v), authorizing the City to inspect and sample the effluent from each Significant Industrial User ("SIU") at least once a year; and
 - iv. Code Section 24-137 implements 40 C.F.R. § 403.5(c)(i), authorizing the City to develop and enforce specific local limits to implement Pretreatment prohibitions, including but not limited to 40 C.F.R. § 403.5(a)(1) prohibiting discharges that may cause interference and/or pass through.
- b. Requirements to develop and implement an ERP (40 C.F.R. § 403.8(f)(2) and (f)(5)):
 - i. Code Section 24-172 and Code Subdivisions IX, X and XI regarding administrative, judicial and supplemental enforcement implement 40 C.F.R. §§ 403.8(f)(2)(vii) and 403.8(f)(5), requiring the City to investigate and address, through appropriate enforcement, instances of IU noncompliance with Pretreatment Standards and Requirements; and
 - ii. Code Section 24-175 implements 40 C.F.R. § 403.8(f)(2)(viii), requiring the City to identify and provide at least annual public notice of any of its SIUs that are in significant noncompliance ("SNC").

15. On or about March 16 through 17, 2009, EPA performed a Pretreatment Program Audit ("2009 Audit") of the City's Pretreatment Program implementation activities pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). A copy of the Audit report was sent to MDNR and the City on or around September 15, 2009.

16. On or about January 24 through 25, 2011, EPA performed a Pretreatment Program Audit (“2011 Audit”) of the City’s Pretreatment Program implementation activities pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). At the conclusion of the 2011 Audit, the City was issued a Notice of Potential Violation (“NOPV”) indicating that the Audit found that the City had failed to implement its approved Pretreatment Program. A copy of the Audit report was sent to MDNR and the City on or around March 14, 2011.

17. During the Audits, EPA auditor interviewed City Pretreatment personnel, reviewed documents, including the City’s Code, ERP and records maintained by the City regarding its implementation of the Pretreatment Program. The EPA auditor also performed a visual inspection of the City’s wastewater treatment plant and several IU facilities.

III. Findings of Violation

18. The facts stated in Paragraphs 5 through 16 above, are hereby incorporated by reference.

19. Based on information and data collected during the 2011 Audit and other relevant information, EPA determined that the Respondent failed to implement its approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403, as follows:

- a. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(i), “to identify and locate all possible IUs which might be subject to the POTW Pretreatment Program.” The 2011 Audit documented that Respondent had created a list of suspected industrial users in 2009 but had not completed identification of SIUs as defined at 40 C.F.R. 403.3(v).
- b. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(1)(iii), to control through permit, order, or similar means the contribution to the POTW by each IU to ensure compliance with applicable Pretreatment Standards and Requirements. The 2009 and 2011 Audits documented that at least four SIUs exist but none has been issued a permit by Respondent.
- c. Respondent failed, in violation of 40 C.F.R. §403.5(c)(i), to develop and enforce specific local limits to implement Pretreatment prohibitions, including but not limited to 40 C.F.R. § 403.5(a)(1) prohibiting discharges that may cause interference and/or pass through. The 2011 Audit documented that Respondent did not develop local limits to control ammonia from an SIU that caused interference and/or pass through at the POTW in 2009.

- d. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(v), to inspect and sample the effluent from each SIU at least once per year. The Audit documented that no SIUs had been inspected or sampled by Respondent since January 29, 2009.
- e. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(vii) and (viii), to investigate instances of noncompliance with Pretreatment Standards and Requirements and determine if any of its SIUs were in SNC. The 2011 Audit documented that at the time of the audit, all SIUs were in SNC for failing to sample and report to Respondent at least twice per year, Respondent had failed to make that determination, and Respondent failed to take appropriate enforcement actions to ensure the violations were corrected.

20. Respondent's violations identified in Paragraph 19 above are violations of the requirement of NPDES Permit No. MO0099465 to implement its Approved Pretreatment Program, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d), and regulations promulgated thereunder at 40 C.F.R. Part 403.

III. Order for Compliance

21. Based on the foregoing FINDINGS 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:

22. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide the following to EPA for review and approval:

- a. A list of all potential Significant Industrial Users, their average daily process water consumption, and whether any are subject to the federal Categorical Pretreatment Standards found at 40 C.F.R. Parts 405 through 471. The list should identify those facilities the City intends to permit under the Pretreatment program.
- b. A draft of the permit form Respondent intends to use in meeting the requirements of 40 C.F.R. § 403.8(f)(1)(iii), to "[c]ontrol through permit, order, or similar means" the contribution of its Significant Industrial Users. In addition, Respondent shall provide a schedule identifying when each permit will be issued.
- c. A copy of its Sewer Use Ordinance and any modifications made since Respondent's Pretreatment Program was approved on or around October 3, 1988.

- d. A proposed schedule for inspecting and sampling all SIUs by no later than December 31, 2011.
- e. A copy of its approved ERP. If Respondent elects to modify its ERP in accordance with procedures found in 40 C.F.R. Part 403 during the duration of this Order, a copy shall be sent to EPA at the same time it is sent to MDNR for approval
- f. A statement on whether the Pretreatment staff is properly trained, and if training is found to be needed, how and when the City will acquire the training.
- g. A schedule for evaluating the City's current local limits to determine whether those limits are adequate for its proposed SIUs. The evaluation shall address, at a minimum, those pollutants considered to be national Pollutants of Concern as listed in EPA's Local Limits Development Guidance manual of July, 2004.

23. Respondent shall make a compliance status determination, i.e., determine if any SIUs meet the definition of Significant Noncompliance as defined at 40 C.F.R § 403.8(f)(vii)(A) through (G), twice per year. The determinations shall be made following the collection of all sampling events and reporting requirements between July 1, 2011 and December 31, 2011, and between January 1, 2012 and June 30, 2012, and shall be reported in the corresponding quarterly report required pursuant to Paragraph 24, below.

Reporting

24. Beginning January 28, 2012, Respondent shall submit to EPA on a quarterly basis (January 28, April 28, July 28 and October 28) until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 34, below, the following information regarding its Pretreatment implementation and enforcement activities during each reporting quarter:

- a. a report on the Respondent's determination of the compliance status for each IU;
- b. a list of each permit issued to an IU that includes and description of the pollutant parameters addressed by each such permit;
- c. copies of any periodic compliance reports submitted by SIUs to the Respondent;

- d. a description of any enforcement taken by Respondent pursuant to the terms of its ERP;
- e. a copy of the inspection report, checklist and slug control plan determination for each inspection of an SIU Respondent has conducted during the quarter, or a statement that Respondent has conducted no SIU inspections; and
- f. a copy of the sample results for each IU sampled by Respondent during the quarter and a copy of any correspondence issued in response to such sampling, or a statement that Respondent has conducted no sampling of IUs.

Certification

25. All submissions made by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

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.

Submittals

26. All documents required for submittal to EPA shall be sent by certified mail, return receipt requested, to the following:

Mr. Paul Marshall, Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

27. A copy of each submittal to EPA shall be delivered to MDNR, as follows:

Walter Fett, Environmental Engineer
NPDES Permits & Engineering Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

V. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

28. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating, an 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.

29. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

30. 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 Section 309 of the Act, 33 U.S.C. § 1319, 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

31. 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

32. 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.

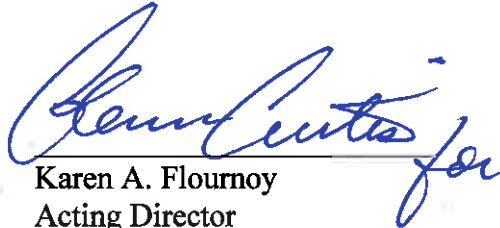
Effective Date

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

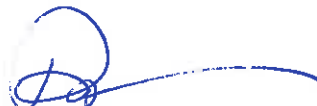
Termination

34. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 16th day of October, 2011.



Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller
Senior Counsel
Office of 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 Order for Compliance to the Regional Docket 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 Order for Compliance to:

The Honorable Ron Blum
Mayor, City of St. Clair, Missouri
#1 Paul Parks Drive
St. Clair, Missouri 63077.

I further certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

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

Mike Struckhoff
Missouri Department of Natural Resources
Saint Louis Regional Office
7545 South Lindberg, Suite 210
St. Louis, Missouri 63125.

OCT 27 2011

Date

Kinsp 10/27/11