

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

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

Docket No. CWA-07-2010-0133

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

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 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

Statutory and Regulatory Framework

2. 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.

3. 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.

4. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

5. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

6. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

7. 40 C.F.R. § 122.26(b)(14)(viii) defines “stormwater discharge associated with industrial activity”, in part, as “[t]ransportation facilities classified as Standard Industrial Classification[] ... 45... which have...airport deicing operations.”

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. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Factual Background

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

10. At all times relevant to this action, Respondent was the owner and/or operator of the Kansas City International Airport, located at 601 Brazilia Avenue, Kansas City, Missouri (the Site) with a SIC code of 4581.

11. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows to Todd Creek. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

12. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

13. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(viii), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. Respondent discharged pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

15. Stormwater runoff from Respondent's construction site results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(viii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17. Respondent applied for and was issued NPDES permit coverage under the general permit described in paragraph 10 above. MDNR assigned Respondent Permit No. MO-00114812, which was issued on April 18, 2003.

18. On February 17, 2010, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the site in accordance with the CWA.

Findings of Violation

Failure to Comply with Effluent Limitations or Conditions

19. The facts stated in paragraphs 9 through 18 above are herein incorporated.

20. Section A of the Effluent Limitations and Monitoring Requirements section of the permit provides that Biochemical Oxygen Demand (BOD₅) shall not exceed a daily maximum of 45 mg/L and a monthly average of 30 mg/L; and that Chemical Oxygen Demand (COD) shall not exceed a daily maximum of 120 mg/L and a monthly average of 90 mg/L.

21. Documents collected during the inspection referenced in paragraph 18 above, revealed that Respondent failed to comply with effluent limitations for BOD₅ and COD. Specifically, documents reveal an exceedance of the daily and monthly BOD₅ limitation on December 29, 2008; an exceedance of the daily and monthly BOD₅ limitation and monthly COD limitation on February 11, 2009; an exceedance of the monthly BOD₅ limitation on March 10, 2009; and an exceedance of the monthly BOD₅ limitation on January 14, 2010.

22. Respondent's failure to comply with effluent limitations or conditions is a violation of Respondent's permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and implementing regulations.

Order For Compliance

23. Based on the Factual Background 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 24 through 27.

24. Within ninety (90) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violation cited above, and to come into compliance with all of the applicable requirements of the permit.

25. Beginning ninety (90) days after the effective date of this Order, Respondent shall, on a monthly basis through April 2011, submit documentation to EPA providing results for any BOD₅ and/or COD monitoring and/or sampling of the contents of the three million gallon aerated tank and the two 1.3 million gallon basins.

26. Within ninety (90) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

27. In the event that Respondent believes complete correction of the violations cited herein is not possible within ninety (90) days of the effective date of this Order, the Respondent shall, within those ninety (90) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

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

Mr. Raju Kakarlapudi
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

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

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

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

30. 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.

31. 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(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

32. 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

33. 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.

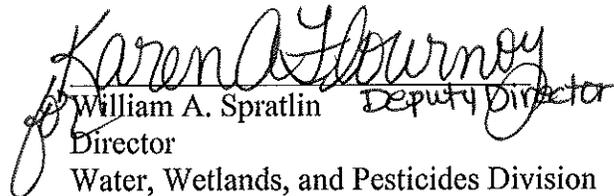
Effective Date

34. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA Region 7.

Termination

35. 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.

Issued this 24th day of August, 2010.


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


Sarah LaBoda
Senior Assistant Regional Counsel

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Findings of Violations and Order for Compliance
Docket No: CWA 07-2010-0133
Page 7 of 7

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 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:

Ms. Sabrina Largen
Environmental Manager
Kansas City Aviation Department
P.O. Box 20047
Kansas City, Missouri 64195

Mr. Robert Jones
Environmental Compliance Manager
Kansas City Aviation Department
P.O. Box 20047
Kansas City, Missouri 64195;

and via first class mail to:

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

Ms. Dorothy Franklin
Missouri Dept. of Natural Resources
Kansas City Regional Office
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710.

8/23/10

Date


Signature