

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

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KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGIONAL OFFICE VII
REGIONAL CLERK

IN THE MATTER OF:)
Winfield, Missouri)
A Municipality)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. 1319(a)(3))

FINDINGS OF VIOLATION AND
ORDER FOR COMPLIANCE

Docket No. CWA-07-2010-0171

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE ("Order") 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(e)(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. Respondent, the City of Winfield, Missouri (hereafter "Respondent" or "Winfield"), operates a Publicly Owned Treatment Works ("POTW") in the State of Missouri that treats domestic and commercial wastewater.

3. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System ("NPDES") program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

II. Jurisdiction and Finding of Fact

4. 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 NPDES permit issued pursuant to that Section.

5. Winfield is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. Winfield owns and operates a POTW (hereafter "the POTW") that receives and treats wastewater from various domestic and commercial sources.
7. Winfield's POTW discharges to McLean Creek, a tributary of the Mississippi River.
8. 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.
9. 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.
10. On August 25, 2004, MDNR granted NPDES permit No. MC-0038676 (hereafter "NPDES permit"), to the Respondent for discharges from the Winfield Municipal Lagoon ("WWTF") to McLean Creek, a tributary of the Mississippi River, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit had an expiration date of August 24, 2009.
11. Pursuant to 40 C.F.R. § 122.41(e), each of Respondent's NPDES Permits contains the following Standard Condition at Part LB.3: "If the permittee wishes to continue an activity regulated by the permit after the expiration date of this permit, the permittee must apply for a new permit 180 days prior to expiration of this permit." (hereafter referred to as "Duty to Apply").
12. Pursuant to Missouri State Regulations at 10 C.S.R. 20-6(10)(E), the terms and conditions of an expired NPDES permit are automatically continued if a timely and sufficient application for a new NPDES permit has been made and MDNR is unable, through no fault of the permittee, to issue a permit prior to expiration. Only NPDES permits continued under these requirements remain fully effective and enforceable past expiration.
13. Based on observation and review of the Respondent's and MDNR records, the Respondent did not submit a timely application for permit to discharge. MDNR did not receive application for a new NPDES permit until May 10, 2010, which was approximately nine months past expiration, and approximately fifteen months past the date the Respondent was required to apply for a new permit. The Respondent's NPDES permit was not administratively extended pursuant to the Missouri Code of State Regulations, 10 CSR 20-6.010(10)(E).
14. Part I, Section A of the Respondent's NPDES permit sets a monthly average and weekly average effluent limitation for Total Suspended Solids (TSS), and requires monitoring for this parameter at least once per month. The monthly average limitation for TSS is 70 milligrams per liter ("mg/L") and the weekly average limitation for TSS is 110 mg/L.

15. On December 8 through December 10, 2009, EPA performed an inspection of the Winfield POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (hereafter "Inspection").

16. During the Inspection, the EPA inspector observed the operation of Winfield's POTW, performed sampling of the POTW's discharge, reviewed Winfield's discharge monitoring reports ("DMRs"), and documented his findings regarding Respondent's compliance with its NPDES permit and the CWA. Based on the review, Winfield's POTW exceeded the NPDES permit limitation for TSS as follows:

Date of Violation	NPDES Permit Final Effluent Limit	Reported Effluent Limit	Percent Exceedance
May 2006	Weekly Average: 110 mg/L	137 mg/L	125%
	Monthly Average: 70 mg/L	350 mg/L	500%
August 2006	Monthly Average: 70 mg/L	550 mg/L	786%
November 2006	Weekly Average: 110 mg/L	113 mg/L	103%
	Monthly Average: 70 mg/L	113 mg/L	161%
October 2007	Monthly Average: 70 mg/L	149 mg/L	213%
July 2007	Monthly Average: 70 mg/L	73 mg/L	104%
March 2008	Weekly Average: 110 mg/L	164 mg/L	149%
	Monthly Average: 70 mg/L	128 mg/L	183%
April 2008	Weekly Average: 110 mg/L	160 mg/L	146%
	Monthly Average: 70 mg/L	91 mg/L	130%
May 2008	Weekly Average: 110 mg/L	240 mg/L	218%
	Monthly Average: 70 mg/L	169 mg/L	241%

III. Findings of Violation

17. Respondent discharged pollutants from its POTW without a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, from August 24, 2009, through the present, as described in Paragraph 9 through 13. Respondents discharge without a permit violated Section 301 of the CWA, 33 U.S.C. § 1319.

18. Respondent violated its NPDES permit by failing to comply with the effluent limitations for TSS and pH during the time periods identified in Paragraph 16, above. Respondent's violations of the requirements of its NPDES Permit constitute violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

IV. Order for Compliance

19. 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.

20. 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 NPDES requirements of the CWA.

21. Within thirty (30) days of the Effective Date of this Order, Respondent shall submit information to EPA, with a copy to MDNR, as follows:

- (a) An explanation of actions taken and/or plans for action to be taken to correct the violations cited herein; and
- (b) An explanation of processes and procedures developed, revised and implemented to prevent future violations and ensure compliance with the NPDES permit requirements.

22. After review of the information submitted by Respondent pursuant to Paragraph 21, above, EPA may determine that additional information is needed and/or additional corrective measures are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

23. For one year from the effective date of this Order, Respondent shall submit to EPA on a quarterly basis, monthly DMRs. The reports shall be submitted no later than the 28th day of the month following the end of the calendar quarter (e.g., January 28, April 28, July 28, and October 28).

24. 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 contain 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

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

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

26. 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

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

V. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

27. 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.

28. 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

29. 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

30. 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

31. 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

32. 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.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 27th day of December, 2010.


William A. Spratlie
Director
Water, Wetlands and Pesticides Division


Melissa A.C. Bagley
Assistant Regional Counsel
Office of Regional Counsel

