

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 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 )  
 )  
The City of Sikeston, Missouri ) Docket No. CWA-07-2011-0118  
 )  
Respondent ) FINDINGS OF VIOLATION  
 ) AND ORDER FOR COMPLIANCE  
 )  
Proceedings under Sections 308(a) and )  
309(a)(3) of the Clean Water Act, )  
33 U.S.C. §§ 1318(a) and 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), and Section 308, 33 U.S.C. § 1318, 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 Sikeston, 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 Scott County, Missouri, that includes two wastewater treatment plants ("WWTP") and a sewage collection system, which receives wastewater from various domestic and non-domestic sources. 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. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the Act, 33 U.S.C. § 1342. Section 402 of the Act 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.

8. The POTW discharges to St. John's Ditch and Ditch #4 .

9. 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.

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

11. Respondent's Pretreatment Program was approved by MDNR on or about August 26, 1983. Respondent's approved Pretreatment Program sets forth procedures for implementing requirements for regulating industrial discharges to Respondent's POTW, specifically requirements set forth at 40 C.F.R. 403.8(f)(1) and (f)(2). The Enforcement Response Guidance and Sewer Use Ordinance are components of Respondent's approved pretreatment program. Respondent's Enforcement Response Guide was approved by MDNR and EPA on or about January 21, 1992 and Respondent's Sewer Use Ordinance was approved by MDNR and EPA on or about December 11, 1991.

12. On or about April 4, 2008, Permit No. MO0035009 was issued to Respondent by MDNR pursuant to Section 402 of the Act, 33 U.S.C. § 1342, authorizing discharge into St. John's Ditch, a navigable water from the "Sikeston WWTF." The permit's Special Conditions required the city to implement its approved Pretreatment program and submit an annual report detailing Pretreatment implementation activities.

13. On or about November 14, 2008, NPDES Permit No. MO0035009 was reissued to Respondent by MDNR pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The Permit contains a section entitled D. Special Conditions, paragraph 10 which requires the City to implement its approved Pretreatment program in accordance with the requirements of the General Pretreatment Regulations, 40 C.F.R. Part 403.

14. Permit number MO0035009 contains a requirement at D. Special Conditions, paragraph 11 to submit to MDNR before March 31<sup>st</sup> of each year a report describing Pretreatment activities for the prior calendar year. The report is to contain an updated list of

industrial users, a summary of the status of each industrial user, and a summary of compliance and enforcement activities, including inspections.

15. On or about October 24, 2008, MDNR issued NPDES permit MO0120863 authorizing discharges from the Sikeston Business and Technology Park wastewater treatment plant. The Sikeston Business and Technology Park wastewater treatment plant discharges to Ditch #4.

16. On or about January 5<sup>th</sup> through 7<sup>th</sup>, 2010 EPA performed a Pretreatment Program Audit of the City's pretreatment implementation activities. During the Audit, EPA identified numerous program deficiencies. A report documenting the deficiencies was submitted to MDNR and the City of Sikeston on or around March 5, 2010.

### **III. Findings of Violation**

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

18. Based on the findings of EPA's Audit and Annual Pretreatment Report, on December 3, 2010 EPA issued the City a Request for Information, pursuant to the authority of Section 308 of the Act. EPA's review of the City's response, which was submitted on January 4, 2011, identified the extent of the City's Pretreatment Program deficiencies.

19. From the Pretreatment Audit and review of the City's submittal to the Section 308 Information request, EPA has determined that the Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), by violating its NPDES permit requirement to implement Respondent's approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403. Respondent has failed to implement its pretreatment program in at least the following ways:

- a. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(i), "to identify and locate all possible industrial users which might be subject to the POTW Pretreatment Program." Unilever Ice Cream, USA, North Plant discharges well in excess of 5% of the hydraulic and organic loading to the Sikeston Business and Technology Park Lagoons (NPDES number MO0120863), and as such, is a Significant Industrial User (SIU) as defined by the General Pretreatment Regulations, 40 C.F.R. 403.2(v) and the City's Sewer Use Ordinance (SUO) at 13.16.20 paragraph 48. Respondent failed to identify Unilever Ice Cream, USA North Plant as a SIU subject to the POTW Pretreatment Program.
- b. Respondent failed, in violation 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. The audit determined that the City's approved method for controlling contributions from SIUs is by permit and that Unilever Ice Cream, USA, North Plant, a SIU, had never been issued a discharge permit.
- c. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(vii) and its Enforcement

Response Guide, approved by MDNR on or about January 21, 1992, to investigate instances of noncompliance with Pretreatment Standards and Requirements. Specifically, Respondent failed to determine if any of its Significant Industrial Users were in significant noncompliance as defined by 40 C.F.R § 403.8(f)(vii)(A) through (G) and the City's Ordinance at 13.16.500. EPA's audit found that all SIUs are in significant noncompliance for failing to sample and report to Respondent at least twice per year for all permitted pollutants since at least 2007.

- d. Respondent failed, in violation of its NPDES permit requirement at D. Special Conditions, paragraph 11, to update its list of industrial users as part of its annual report to MDNR on Pretreatment implementation activities. Specifically, Respondent recognized Cott Beverages as a Significant Industrial User as early as 2005, but did not include Cott Beverages in Respondent's annual report until the 2009 annual report was submitted to MDNR on March 30, 2010.
- e. Respondent failed, in violation of its NPDES permit requirement, D. Special Conditions, paragraph 11, to provide a summary of the status of its industrial users in the annual report submitted to MDNR. Specifically, Respondent failed to report in the years 2005, 2006, 2007, and 2008, that all of its SIUs were in significant noncompliance for failing to sample and report at the frequency specified in their permits, as noted in paragraph c, above.
- f. Respondent failed, in violation of 40 C.F.R. Part 403.8(f)(2)(vii), and City Ordinance Chapter 13.16.500, to comply with the public participation requirements of 40 C.F.R Part 25 by publishing an annual list of industries in Significant Noncompliance in a newspaper of general circulation that provides meaningful public notice. Specifically, Respondent failed to publish those SIUs in Significant Noncompliance for the years 2005, 2006, 2007, and 2008.
- g. Respondent failed, in violation of 40 C.F.R Part 403.8(f)(3) to provide sufficient qualified personnel to carry out implementation of the Pretreatment program. Specifically, the EPA's audit found that the BMU personnel responsible for SIU inspections had insufficient knowledge of the Pretreatment program.
- h. Respondent failed, in violation of 40 C.F.R Part 403.8(f)(2)(vii), and its Enforcement Response Guide, approved by MDNR on or around January 21, 1992, developed pursuant to 40 C.F.R. Part 403.8(f)(5), to investigate instances of noncompliance and take the appropriate enforcement. Specifically, Respondent took no enforcement for any violations committed by its SIUs from at least 2005 through 2009.

#### **IV. Order for Compliance**

20. 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:

21. Within 45 days of receipt of this Order, Respondent shall issue a permit to Unilever Ice Cream, USA, North Plant, to discharge to the Sikeston Business and Technology Park Lagoons (NPDES permit number MO0120863). The permit shall contain technically based local limits based on plant capacity for BOD, TSS, Oil and Grease, and ammonia to ensure compliance with the final limits of NPDES permit MO0120863. The permit shall contain a sampling frequency sufficient to provide for a reliable determination of compliance.

22. Within sixty (60) calendar days of receipt of this Order, Respondent shall provide the following to EPA:

- a) A copy of the permit issued to Unilever Ice Cream, USA, North Plant
- b) A statement on whether the Pretreatment staff is properly trained, and if training is found to be needed, how the city will acquire the training.

23. Respondent shall report to EPA quarterly on its Pretreatment enforcement activities. The report shall be postmarked by the 20th day following the end of the calendar quarter. The first report shall be submitted by October 20, 2011. The reports shall consist of copies of any periodic compliance reports submitted by industries and any enforcement response taken by Respondent. If an inspection of an SIU has occurred during the quarter, a copy of the inspection report or checklist shall be submitted. If Respondent has sampled any industries, a copy of the sample results and any correspondence triggered by the sampling shall be submitted. If a permit has been issued during the quarter, a copy of the permit shall be submitted.

24. Respondent shall make a compliance status determination [determine if any Significant Industrial Users 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. A report on the compliance status of each industry shall be submitted with the respective quarterly report.

### **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. Respondent shall send all responses required by this Order to be submitted to EPA to:

Paul T. Marshall  
Pretreatment Coordinator  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

### **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 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.

28. 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.

29. 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**

30. 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**

31. 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

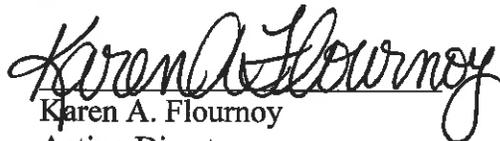
32. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

#### Termination

33. 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.

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

Issued this 17th day of October, 2011.



Karen A. Flourney  
Acting Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101



Kristen Nazar  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

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:

The Honorable Jerry Pullen  
Mayor, City of Sikeston, Missouri  
105 E. Center Street  
Sikeston, MO 63801

and via 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

Gary Gaines  
Missouri Department of Natural Resources  
Southeast Regional Office  
2155 N. Westwood Blvd.  
Poplar Bluff, MO 63901

10/19/11  
Date

  
Signature