

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
)
MISSOURI-AMERICAN WATER)
COMPANY)
)
Respondent)
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Docket No. CWA-07-2004-0299

ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT

I. Preliminary Statement

1. The following Order for Compliance on Consent (Order on Consent) is 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 VII and further delegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.

2. Missouri-American Water Company, (hereafter Respondent or Missouri-American) intends to purchase and operate a potable water distribution system, one deep rock potable water supply well, small ground water tank and all appurtenances (WT) , a wastewater collection system and all appurtenances, and two wastewater treatment plants (WWTFs) that treat municipal and domestic wastewater and that serve Incline Village in Warren County, Missouri (Incline Village WWTFs). The Incline Village WWTFs and WT were formerly owned by the Warren County Water and Sewer Company and were purchased by Respondent when the Missouri Public Service Commission (MPSC) placed the Warren County Water and Sewer Company into receivership.

II. Statutory and Regulatory Framework

3. 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.

4. 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.

5. Pursuant to the authority of 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.

6. On October 30, 1974, the Missouri Department of Natural Resources (MDNR) was authorized as 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 (including implementing regulations). EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

III. Findings of Fact

7. Respondent Missouri-American Water Company is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. Missouri-American intends to purchase and operate a water distribution system, a wastewater collection system and all appurtenances, one deep rock potable water supply well, small ground water tank and all appurtenances (WT) and two wastewater treatment plants (WWTFs) that treat municipal and domestic wastewater and that serve Incline Village in Warren County, Missouri (Incline Village WWTFs).

9. Respondent’s Incline Village WWTFs are each a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

10. Respondent’s WWTFs cause the “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

11. Respondent’s WWTFs discharge pollutants into Incline Village Lake. The Incline Village Lake is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

12. Respondent’s discharge of pollutants from the Incline Village WWTFs require permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. MDNR previously issued two NPDES permits (MO-0098817 and MO-0100358, hereafter “NPDES Permits”) to Warren County Water and Sewer Company for the Incline Village WWTFs. During the period of operation and ownership by the Warren County Water

and Sewer Company, the WWTFs have been repeatedly cited by MDNR for chronic violations of the NPDES permits and the CWA for exceedence of effluent limits, bypasses and lack of proper operation and maintenance. Until upgrades at the facility have been completed, non-compliance with the terms of the NDPES permits and the CWA will continue. Respondent intends to make the necessary upgrades at the facility upon purchasing the system.

14. On or about August 19, 2004, Respondent and MDNR entered into a Settlement Agreement which specifies a schedule for upgrades to both WWTFs that Respondent shall complete in order to allow both WWTFs to return to compliance with the NPDES permits. The MDNR Settlement Agreement requires Respondent to pay stipulated penalties if Respondent fails to comply with the terms of the MDNR Settlement Agreement. A copy of the MDNR Settlement Agreement is attached hereto as Attachment 1.

IV. Order For Compliance

15. Based on the Findings of Fact 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 complete the upgrades for the Incline Village WWTFs, in accordance with terms and schedule specified in Paragraphs 2 to 8 of Attachment 1 to this Order on Consent.

16. Beginning with the effective date of this Order on Consent, Respondent shall submit to EPA on a quarterly basis a Compliance Report (November 15, February 15, May 15 and August 15) that contains 1) a report on the progress towards completion of the work required by Paragraph 15, above; and 2) copies of all monitoring and sampling information, including bench sheets, and sludge application logs with supporting documentation required pursuant to the NPDES permits. This reporting obligation shall continue until Respondent is notified by EPA that the quarterly reporting may cease.

Submissions

17. All quarterly Compliance Reports and a copy of all documents required for submittal to MDNR under the attached Settlement Agreement shall be submitted to EPA by mail to:

Berla Jackson-Johnson (WWPD-WENF)
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, KS 66101

V. General Provisions

Effect of Compliance with the Terms of this Order

18. On or about August 19, 2004, Respondent and MDNR entered into a Settlement Agreement. Paragraphs 2 to 8 of the MDNR Settlement Agreement are incorporated into this Order on Consent. This Order on Consent 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. Compliance with the terms of this Order on Consent 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. Issuance of this Order on Consent 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. However, EPA will consider Respondent's compliance with MDNR's Settlement Agreement (including payment of stipulated penalties) and this Order on Consent, in determining whether such an enforcement action is appropriate.

19. This Order on Consent shall not constitute a permit under the CWA. Compliance by Respondent with the terms of this Order on Consent shall not relieve Respondent of its obligations to comply with the CWA or any other applicable local, state or federal laws and regulations. Compliance with the terms of this Order on Consent shall not relieve Respondent of its responsibility to obtain and comply with any required local, state and/or federal permits.

20. No action or decision by EPA pursuant to this Order on Consent shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of a judicial action to compel Respondents' compliance with the requirements of this Order on Consent.

Subsequent Amendment

21. This Order on Consent and any Plan, Report, schedule, and/or any other written document submitted under this Order on Consent, may only be amended by mutual agreement of EPA and Respondent. Any amendment shall be in writing, signed by representatives of EPA and Respondent, and shall have as its effective date those dates specified therein, and shall be incorporated into and enforceable as part of this Order on Consent.

Access and Requests for Information

22. Nothing in this Order on Consent 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

23. If any provision or authority of this Order on Consent, or the application of this Order on Consent to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order on Consent shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

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

Termination

25. This Order on Consent shall remain in effect until all upgrades and repairs to the WWTFs and WT are completed pursuant to the terms of the MDNR Settlement Agreement. EPA will provide written notice to Respondent of the termination of the Order on Consent within ten (10) days of confirmation that the work required by Paragraph 16, above, and the MDNR Settlement Agreement has been completed.

Signatories

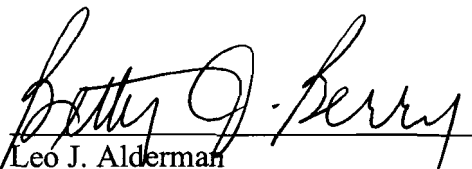
26. The undersigned signatories for Respondent and EPA hereby certify that they have the authority to sign this Order on Consent and to bind the respective parties to the terms contained herein.

27. This Order on Consent may be signed by EPA and Respondent in part and counterpart.

28. This Order on Consent may be executed by EPA upon receipt from Respondent of a telefaxed signature page.

CWA Docket No. CWA-07-2004-0299

For the United States Environmental Protection Agency



Leo J. Alderman
Director, Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101



HOWARD C. BUNCH
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII

8/23/07.
DATE

29. Respondents agree that the original Order on Consent signed by Respondent shall be transmitted by overnight mail to Howard C. Bunch, Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. Upon EPA's receipt of the signed original from Respondent, the original signature page signed by Respondent shall be be filed with the previously executed copy with the Regional Hearing Clerk of Region VII of EPA.

For Missouri-American Water Company



Name:

Title: VP

8/23/04
DATE

ATTACHMENT 1:

**SETTLEMENT AGREEMENT BETWEEN
MISSOURI-AMERICAN WATER COMPANY
AND THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made between the Missouri Department of Natural Resources, the "Department"; Jeremiah W. (Jay) Nixon, Attorney General of Missouri, the "AGO"; and Missouri-American Water Company, "MO-AWC". The parties, the Department, the AGO, and MO-AWC, enter into this agreement on the date this Settlement Agreement is signed by the Department.

WHEREAS, Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri.

WHEREAS, the Department is the state agency authorized to administer Missouri water pollution and safe drinking water statutes and regulations, including but not limited to the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (as amended) on behalf of the Clean Water Commission and state rules set forth in Chapter 640 of the Revised Statutes of Missouri, which are necessary for the implementation, administration, and enforcement of the federal Safe Drinking Water Act (as amended) on behalf of the Safe Drinking Water Commission.

WHEREAS, MO-AWC is a corporation in good standing registered in the State of Missouri.

WHEREAS, MO-AWC intends to purchase the assets of Warren County Water & Sewer Company (Public Water Supply Identification Number MO 6036149) formerly owned and operated by Gary Smith upon execution of this Settlement Agreement between the Department and MO-AWC and a Settlement Agreement between the Environmental Protection Agency and MO-AWC.

WHEREAS, the Warren County Water & Sewer Company consists of a potable water distribution system, a wastewater collection system and all appurtenances, one deep rock potable water supply well, small ground water tank and appurtenances (WT), and two wastewater treatment plants (WWTPs) that serve Incline Village in Warren County, Missouri.

WHEREAS, the Incline Village Lake, which is waters of the state as defined in Section 644.016(17), RSMo, is the receiving stream for the WWTPs, which are operated pursuant to Missouri State Operating Permits MO-0098817 and MO-0100358.

WHEREAS, both WWTPs have been cited for chronic exceedence of effluent limits, bypasses and lack of proper operation and maintenance while owned by Warren County Water & Sewer Company.

WHEREAS, MO-AWC, as future owner of the assets of Warren County Water and Sewer Company, agrees to upgrade and/or replace the WWTPs and to upgrade the WT in order to achieve compliance with Missouri water pollution and safe drinking water statutes and regulations.

WHEREAS, the Missouri Clean Water Law, Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to and including ten thousand dollars and no cents (\$10,000.00) per day for each day, or part thereof for each violation.

WHEREAS, Missouri Safe Drinking Water provisions, Sections 640.100-640.140, RSMo, make it unlawful to violate Safe Drinking Water regulations promulgated pursuant thereto and establish civil penalties of up to and including one hundred dollars (\$100.00) per day for each violation and administrative penalties of up to

one thousand (\$1,000.00) per day for each day, or part thereof for each violation, up to a maximum of twenty five thousand dollars (\$25,000.00) for each violation.

WHEREAS, the Department, the AGO, and MO-AWC desire to resolve all disputes or claims which could be made against MO-AWC upon taking ownership of Warren County Water & Sewer Company by MO-AWC for violations of Missouri water pollution and safe drinking water statutes and regulations.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Department, the AGO, and MO-AWC further stipulate and agree as follows:

1. The provisions of this Settlement Agreement shall apply to and be binding upon the Department, the AGO, and MO-AWC, as well as their successors in interest, and their successors in office. Further, each party executing this Settlement Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Settlement Agreement.

2. MO-AWC shall immediately upon closing of the sale of the assets of Warren County Water and Sewer Company, comply with applicable monitoring and reporting requirements contained in Missouri NPDES Nos. MO-0098817 and MO-0100358 and PWS ID 6036149 issued to Warren County Water and Sewer, Inc.

3. MO-AWC shall, within thirty (30) days of closing upgrade flow-metering equipment at each plant.

4. MO-AWC shall, within sixty (60) days of closing of the sale of the assets of Warren County Water & Sewer Company, install a temporary sludge holding tank at each WWTP, for wasting sludge, which shall either be removed upon completion of the

upgrade/replacement of the WWTPs or incorporated with the final upgrades upon completion of the upgrade of the WWTPs.

5. Within ninety (90) days of closing of the sale of the assets of Warren County Water & Sewer Company, MO-AWC shall submit to the Department an engineering report, plans and specifications and a time table, identifying the corrections required to be made to the WWTPs and the public water supply. The report must be prepared by and contain the seal of an engineer licensed and registered in the State of Missouri. MO-AWC and its engineer shall respond to any comments by the Department or requests for clarification of information within thirty (30) days of a request by the Department for such further information.

6. Within one hundred and eighty (180) days of the Department's approval of the engineering report, plans and specifications and issuance of a construction permit, MO-AWC shall complete modification/replacement of the WWTPs and the public water supply.

7. Within one (1) year of closing of the sale of the assets of Warren County Water & Sewer Company, MO-AWC shall install an elevated storage tank or a standpipe to rectify the low water pressure concerns in the distribution system. Prior to construction of this facility, MO-AWC shall submit plans and specifications stamped by a registered engineer and an application for a Permit to Construct. Additionally, MO-AWC shall, immediately upon finalization of this agreement, submit plans and specifications, also stamped by a registered engineer, showing location and details of a proposed interim potable water supply booster pump and an application for a Permit to Construct such booster. Within four (4) months of closing of such sale, MO-AWC shall

install that booster pump to elevate the pressure. During this interim period, MO-AWC shall issue a Boil Water Advisory for any and each period of time during which the operating pressure of the potable water distribution system falls below 20 pounds per square inch (psi) as prescribed in 10 CSR 60-4.080(9) and 10 CSR 60-8.010(1)12.

8. MO-AWC shall submit to the Department an engineer's certification of construction completion, within thirty (30) days of completion of construction.

9. Under no condition shall any construction take place to modify, correct or replace any portion of the WWTPs or public water supply system, except for the construction of the temporary sludge holding tanks, until construction permits have been issued by the Department, and all such construction must be in strict compliance with the approved plans and specification reviewed and approved by the Department.

10. During all said periods of time set forth herein, the Department will not take enforcement action against MO-AWC so long as MO-AWC is in compliance with the terms of this Agreement. In the interim, from the date of this Settlement Agreement to the date all improvements contemplated herein are complete, MO-AWC shall take all practicable efforts to operate and maintain the WWTPs so as to produce the best quality effluent possible with the equipment in place during such interim period. Likewise, MO-AWC shall take all practicable efforts to insure that the operation of the public water supply and the quality and quantity of that supply is in conformance with the Missouri Safe Drinking Water Law and pertinent regulations. MO-AWC shall, no later than the date referred to in Paragraph 6, apply for, obtain and comply with the terms of a Missouri State Operating Permit (water pollution) and a permit to dispense water from the Safe Drinking Water Program. The Department shall hold in abeyance its review of any and

all such permit applications such that final issuance of said permits to MO-AWC shall occur no earlier than said date.

11. With respect to any violation of the Clean Water Act (any implementing regulations) or the Safe Drinking Water Act (and implementing regulations) occurring during the time specified in Paragraph 6, which are caused by the substandard condition of the subject facilities arising from the former owner's neglect and not caused by operational neglect or lack of oversight by MO-AWC, the Department shall, to the extent possible, include a narrative statement to that effect on any and all reports to EPA or to any databases maintained by the Department, the EPA, or any other agency.

12. Should MO-AWC fail to meet the terms of this Settlement Agreement, including the deadlines set out in paragraphs 2 - 8, MO-AWC agrees to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$250.00 per day
31 to 90 days	\$500.00 per day
91 days and above	\$1,000.00 per day

However, the payment of stipulated penalties shall not preclude or compromise in any way the right of the Department to take further legal action to address violations of the Missouri Clean Water Law and regulations. Any such stipulated penalty shall be paid within ten (10) days of demand by the AGO in the form of a certified check or cashier's check made payable to the "State of Missouri (Warren County School Fund)." The check shall be mailed to:

JoAnn Horvath
Collections Specialist
P.O. Box 899
Jefferson City, MO 65102

This stipulated penalty is not a civil penalty, nor an administrative penalty, rather it is a stipulated sanction for not complying with the terms of this agreement.

13. Nothing in this Settlement Agreement shall be construed as excusing or forgiving noncompliance with the Missouri Clean Water Law, Chapter 644, RSMo, or the Missouri Safe Drinking Water Law, Chapter 640, RSMo and their implementing regulations after the compliance time periods have run, which are set forth hereinbefore. In the event that MO-AWC fails to comply with any other terms as specified herein, a breach of this Settlement Agreement shall be deemed to have occurred and litigation to require compliance or any other remedies will be pursued, including but not limited to, filing suit for the violations of the Missouri Clean Water Law and/or the Missouri Safe Drinking Water Law as alleged in this Settlement Agreement.

14. Execution of this Settlement Agreement shall be complete when the Department has signed and dated the Settlement Agreement. As the last party signing the Settlement Agreement, the Department shall promptly distribute copies of the executed Settlement Agreement to the other signatories.

15. Upon full compliance with this Settlement Agreement, the Department and AGO agree to refrain from initiating or asserting against MO-AWC any civil or administrative suit claiming violations of Missouri water pollution and safe drinking water statutes and regulations arising out of the terms of this Agreement. In the event MO-AWC fails to meet the terms of this Settlement Agreement and MO-AWC must pay the above-mentioned penalties, upon receipt of full payment of such penalties, the Department and the AGO agree to refrain from initiating or asserting against MO-AWC any civil or administrative suit claiming violations of Missouri water pollution and safe drinking water statutes and regulations.

16. Each signatory to this Settlement Agreement avers that he or she has the authority to bind his or her respective party to this Settlement Agreement as evidenced by their signature on this Settlement Agreement.

17. In consideration for the release contained herein, MO-AWC agrees to comply with all applicable Missouri water pollution statutes and regulations and Public Drinking Water statutes after the compliance time periods have run, which are set forth hereinbefore.

18. The terms stated hereinabove constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they express or implied, oral or written, except those, which are expressly set forth hereinabove. The terms of this agreement supercede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This agreement may not be modified orally.

19. This Settlement Agreement shall terminate one year and two months from the execution of this Agreement per the terms of Paragraph 14.

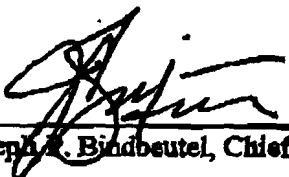
In Witness Whereof, the parties have executed this Agreement as follows:

MISSOURI-AMERICAN WATER COMPANY

By: 
R. Douglas Mitchem,
Regional Director of Service Delivery

Date: 8/12/04

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI

By: 
Joseph R. Bindbeutel, Chief Counsel

Date: Aug 16, 04

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Jim Hull
Jim Hull, Director
Water Protection Program

Date: 8-19-04

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of the foregoing Administrative Order for Compliance on Consent 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 by certified mail, return receipt requested, to the representative of Missouri - American Water Company specified below.

Robert LaGrand
Missouri-American Water Company
535 North Ballas Rd.
St. Louis MO 63141

Date

8/27



HOWARD C. BUNCH.