

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)

) Docket No. CWA-07-2004-0342

THE CITY OF CLARKTON)
MISSOURI)

) FINDINGS OF VIOLATION,
) CONSENT AGREEMENT and
) CONSENT ORDER FOR COMPLIANCE

) Respondent)

) Proceedings under Section 309(a)(3))
) of the Clean Water Act,)
) 33 U.S.C. § 1319 (a))
)

Background and Findings of Violation

Jurisdiction

1. This Administrative FINDINGS OF VIOLATION, CONSENT AGREEMENT and CONSENT ORDER FOR COMPLIANCE has been filed under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), pursuant to Section 309 (a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319 (a) and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. The EPA is alleging that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

3. The Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA Region VII, is the Director of Region VII's Water, Wetlands, and Pesticides Division.

4. Respondent, the City of Clarkton ("the City"), operates a Publicly Owned Treatment Works (POTW) in the State of Missouri.

Statutory and Regulatory Framework

5. 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.

6. 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.

7. To implement Section 402 of the CWA, the 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.

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 Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA. Section 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

9. Section 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

10. Pursuant to Sections 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1), the EPA promulgated the regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Parts 501 and 503. These regulations include record keeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

11. The State of Missouri has not yet been authorized to administer the Sludge Management Program. The EPA remains responsible for enforcement of the requirements of the Sludge Management Program until such a time as the State is authorized to administer the program in its entirety.

Findings of Fact

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

13. The City owns and operates a publicly owned wastewater treatment works (POTW) which receives and treats wastewater from various domestic and commercial sources.

14. The City’s POTW is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

15. The City’s POTW causes the “discharge of pollutants” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The City’s POTW generates “sewage sludge” that is used for “land application” on “agricultural land,” as those terms are defined by 40 C.F.R. §§ 503.9(w), 503.11(h) and 503.11(a), respectively.

17. The City’s POTW discharges pollutants into New Madrid County East Drainage Ditch #1 (East Ditch #1), a tributary of the St. Francis River. The New Madrid County East Drainage Ditch #1 and the St. Francis River are each “navigable waters” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

18. Respondent’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. MDNR granted a NPDES permit, No. MO-0052663, to the Respondent, effective December 29, 2000 and expiring December 28, 2005.

20. On November 18 through 21, 2002 and again on December 10, 2003, the EPA performed inspections of the Clarkton wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the inspection was (1) a facility walk through, (2) a review of self monitoring records and (3) sampling of the waste stream.

Findings of Violation

21. The facts stated in paragraphs 12 through 20 above are herein incorporated.

Count I

22. Part A of Respondent’s permit includes the following limits for discharges from outfall #001 to East Ditch #1, effective upon issuance:

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- a. Biochemical Oxygen Demand (BOD) shall be limited to a weekly average of 45 mg/L and a monthly average of 30 mg/L;
- b. Total Suspended Solids (TSS) shall be limited to a weekly average of 45 mg/L and a monthly average of 30 mg/; and
- c. A removal efficiency of 85% for BOD and TSS shall be met.

23. During the November 2002 inspection, the following practices were observed:

- a. visible solids were discharged through the outfall; and
- b. solids were not routinely removed from the treatment works.

24. Sampling results taken on all three days of the inspection revealed the following results:

- a. Respondent's discharge exceeded the permitted (weekly average) limitations for Biochemical Oxygen Demand (BOD) as follows:

<u>Limit</u>	<u>Reported Value</u>
45 mg/L	136 mg/L

- b. Respondent's discharge exceeded the permitted (weekly average) limitations for Total Suspended Solids (TSS) as follows:

<u>Limit</u>	<u>Reported Value</u>
45 mg/L	85 mg/L

- c. Respondent has not met a removal efficiency of 85% or more for BOD and TSS as provided below: (weekly value for week of inspection)

<u>Date</u>	<u>Pollutant</u>	<u>Removal</u>
November 2002	BOD	5%
November 2002	TSS	60%

25. Respondent's failure to meet these permit limitations is a violation of 40 C.F.R. § 133.102 and the terms and conditions of the NPDES permit for the City of Clarkton and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count II

26. The sludge requirements under 40 C.F.R. Part 503 and Respondent's permit include, among other things, the following:

- a. limited holding time of 2 years for sludge storage before disposal;
- b. adequate storage facilities; and
- c. the filing of an annual report on January 28 of each year.

27. During both inspections, the following practices were observed:

- a. sludge is being stockpiled in the City's drying beds;
- b. sludge has not been disposed of in 4 years; and
- c. a complete annual report has not been filed since 1999.

28. As noted by the inspector, the City's failure to properly remove, store, treat, and dispose of sludge, as well as the City's failure to properly record its sludge management practices, is a violation of 40 C.F.R. 501 and as such is a violation of Section 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1).

Count III

29. Respondent's NPDES permit also contains the following recording, reporting, and record retention requirements:

- a. "Monitoring reports shall be submitted monthly; the first report is due February 28, 2001."
- b. "Recording of Results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information: (i) the date, exact place, and time of sampling or measurements; (ii) the individual(s) who performed the sampling or measurements; (iii) the date(s) analyses were performed; (iv) the individual(s) who performed the analyses; (v) the analytical techniques or methods used; and (vi) the results of such analyses."

- c. “The permittee shall retain records of all monitoring information, including all calibrations and maintenance records and all original strip chart recording for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.”

30. The City failed to submit discharge monitoring reports (DMR) to MDNR for the months of March 2002 through August 2002. Further, the City could not provide documents to support that the City had completed the monthly, weekly and daily monitoring requirements.

31. Results from the EPA inspection and information collected during the EPA inspection shows that the Respondent failed to record and maintain the following information:

- a. DMRs from March 2002 through August 2002;
- b. supporting laboratory records for September 2002;
- c. supporting laboratory records for BOD for October 2002;
- d. operation and maintenance records for 2000, 2001 and 2002;
- e. laboratory equipment maintenance records for 2000, 2001, and 2002;
- f. sample data for BOD and TSS for May 2001 through December 2001;
- g. supporting laboratory records for BOD and TSS for March 2002 through August 2002 and TSS data for October 2002;
- h. laboratory records for January 2002 through October 2002; and
- i. calibration and maintenance records for January 2000 through October 2002.

32. Respondent’s failure to report, record, and maintain the required information is in violation of 40 C.F.R. § 122.41(j) and the terms and conditions of the NPDES permit for the City of Clarkton and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the EPA’s implementing regulations.

Consent Agreement

The Complainant and Respondent hereby agree as follows:

33. Respondent admits the jurisdictional allegations of the Findings of Violation.
34. Respondent neither admits nor denies the factual allegations set forth in the Findings of Violation, which is incorporated herein by reference.
35. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Findings of Violation.
36. In settlement of this matter, Respondent agrees that on or before the dates set forth in the order, it will complete the compliance activities set forth in the Consent Order For Compliance.
37. Respondent and Complainant agree to pay their own costs and attorneys' fees incurred as a result of these actions.
38. Respondent consents to the issuance of this Order hereinafter recited and consents to perform the compliance activities as set forth in this Consent Order for Compliance.
39. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Consent Order for Compliance.
40. Nothing contained in the Consent Order for Compliance shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

Consent Order for Compliance

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 in paragraphs 1 through 8.

1. Immediately upon receipt of this Order, Respondent shall:
 - (a) provide to the EPA and implement a schedule for routinely removing sludge from the treatment works;
 - (b) develop and retain all the documents required by 40 C.F.R. 503.17(a)(5)(i) and (ii) and the terms of their permit;

- (c) cease sludge storage in the drying beds and/or clarifier and properly dispose of sludge that has been stored in the drying beds and/or clarifier;
- (d) cease application of sewage sludge to any site where application of sewage sludge would exceed the agronomic rate;
- (e) provide an alternative disposal option, if land application is no longer feasible;
- (f) meet the Class B pathogen requirements prior to any application, as required by 40 C.F.R. 503.32(b)(2) through (5);
- (g) meet one of the vector attraction reduction requirements, as required by C.F.R. 503.33(b)(1) through (10).

2. Upon completion of the requirements of paragraphs 1(a) through (h) of this Consent Order for Compliance, Respondent shall provide a written statement signed by a principal executive officer or a ranking elected official to the EPA and MDNR. The Statement which is due 30 (thirty) days after completion of the requirements shall contain the following certification:

I certify under penalty of law that the City of Clarkton has complied with all the applicable requirements of C. (1). I also certify 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 violations.

3. On a thirty day interim basis until Respondent has identified the cause of the high flow, Respondent shall submit a report to the EPA identifying the progress Respondent has made in identifying the cause of the high volume of flow. Within one hundred and twenty days of receipt of this Order, Respondent shall submit to the EPA for review and approval, with a copy to MDNR, a report identifying the cause of the high flow. Within ninety days of identifying the cause of the high flow, Respondent shall submit to EPA for review and approval, with a copy to MDNR, a proposal for reducing the volume of flow. The proposal shall include the volume of flow to be reduced and the methods or techniques to be used to make the reduction. The proposal shall include a schedule for implementation.

- a. If the EPA approves the plan for reducing the high volume of flow, the

plan shall be implemented according to the schedule in the approved proposal.

- b. If the EPA disapproves the plan, the City shall address the comments and resubmit the plan for review within thirty days of receipt of the EPA's disapproval.
- c. Upon re-submission, the EPA, in its sole discretion, may either approve the plan, or if the EPA determines that the plan does not adequately address the comments provided by the EPA, then the EPA may unilaterally modify the plan. The EPA will provide Respondent with a copy of the modified plan and Respondent shall implement the modified plan.

4. Within thirty (30) days of receipt of this Order, Respondent shall submit to the EPA for review and approval, with a copy to MDNR, a work plan (Work Plan) containing the following elements for compliance with 40 C.F.R. Part 503:

- a. a plan, including a schedule complete with dates and milestones, for immediately achieving and maintaining compliance through the remainder of calendar year 2004 with all provisions of 40 C.F.R. Part 503, including an immediate alternate disposal method if land application would be in violation of any provision of Part 503;
- b. a plan, including a schedule complete with dates and milestones, for achieving and maintaining compliance with all provisions of 40 C.F.R. Part 503 after calendar year 2004, including design and funding options, and a schedule for any construction that may be necessary to comply with Part 503; and
- c. a plan for routine soil sampling for nitrogen and phosphorus at all land application sites. Samples are to be taken on a quarterly basis for one year. The plan shall include a proposal for the frequency of sampling beyond that period of time.

5. Respondent shall, within fifteen (15) days of receipt of the EPA's comments (if any) regarding the Work Plan submitted under Paragraph 4 above, make modifications and changes to the Work Plan as directed by the EPA, and resubmit the Work Plan to the EPA, with a copy to MDNR.

6. Upon re-submission, the EPA, in its sole discretion, may either approve the plan, or if the EPA determines that the plan does not adequately address the comments provided by the EPA, then the EPA may unilaterally modify the plan. The EPA will provide Respondent with a copy of the modified plan and Respondent shall implement the modified plan.

7. Upon receipt of the EPA approval of the Work Plan submitted under Paragraph 4 above, and modified and resubmitted (if required) under Paragraph 6 above, the approved Work Plan shall be incorporated into and become enforceable under this Order. Respondent shall implement the provisions of the Work Plan, as approved.

8. Respondent shall provide the EPA and MDNR with a report of progress under the Work Plan within ninety (90) days after receipt of notice of approval of the Work Plan, and every ninety (90) days thereafter, until Respondent has completed all activities required under the Work Plan.

Submissions

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

Paula Higbee
Environmental Protection Specialist
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, KS 66101

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

Gary Gaines
Regional Director
Southeast Region Office
Missouri Department of Natural Resources
2155 North Westwood Boulevard, P.O. Box 1420
Poplar Bluff, Missouri 63901

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

11. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

12. This Order does not constitute a waiver or a modification of any requirements of the

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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 the 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

13. Nothing in this Order shall limit the 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.

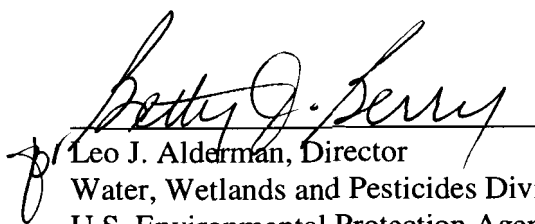
Severability

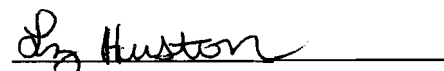
14. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

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Effective Date

15. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

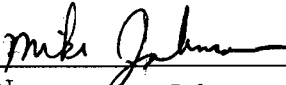

Leo J. Alderman, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101


Liz Huston
Assistant Regional Counsel
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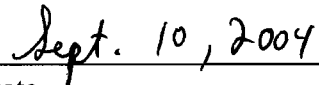
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FOR RESPONDENT:

City of Clarkton:



Name: Mike Johnson
Title: Mayor



Date

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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:

Scott Totten, Director
Department of Environmental Quality
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

Gary Gaines
Regional Director
Southeast Regional Office
Missouri Department of Natural Resources
2155 N. Westwood Boulevard, P.O. Box 1420
Poplar Bluff, Missouri 63901

Date

9/29/04

