

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

2015 APR 20 PM 2: 05

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2015-0024
	)	
THE CITY OF ST. PETERS, MISSOURI	)	
	)	
	)	FINDINGS OF VIOLATION AND
	)	ADMINISTRATIVE ORDER FOR
	)	COMPLIANCE ON CONSENT
	)	
Respondent,	)	
	)	
	)	
Proceedings under Section	)	
309(a)(3) of the Clean Water Act,	)	
33 U.S.C. §1319(a)(3)	)	
_____	)	

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to the City of St. Peters, Missouri (“City” or “Respondent”) pursuant to the authority vested in the Administrator of EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division of EPA, Region 7.

2. The Director, Water, Wetlands and Pesticides Division, EPA, Region 7, on behalf of the Administrator of the EPA, together with the City, enter into this Section 309(a)(3) Order for Compliance on Consent in order to achieve compliance with the CWA, 33 U.S.C. § 1251 *et seq.*

3. EPA and the City (“collectively referred to herein as the “Parties”) have negotiated in good faith and have reached a settlement of the issues in this Order.

4. The Parties agree that settlement of the claims alleged in the Allegations of Violation and Order, consisting of the unauthorized discharges occurring September 2014

through the present, as described in Section III, is fair, reasonable, and in the public interest and entry of this Order is the most appropriate way of resolving the claims alleged herein.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. For the purposes of this Order, Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations contained in the Allegations of Violation and Order.

## II. Statutory and Regulatory Framework

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. 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. To implement 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.

9. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works ("POTW") includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

10. 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, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

11. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

### **III. EPA Allegations**

#### **Allegations of Fact and Law**

12. The City of St. Peters is a political subdivision of the state organized under the laws of Missouri, and as such is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The City owns and operates a POTW that receives and treats wastewater from various residential, commercial and industrial sources.

14. The City’s POTW discharges to Spencer Creek, which is a “navigable water” and “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

15. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

16. The City’s POTW is a “point source” that “discharges pollutants” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

18. MDNR issued NPDES Permit No. MO-0030970 to the City for discharges from its POTW to Spencer Creek. The NPDES permit (hereafter “NPDES permit”) became effective May 13, 2011, was modified March 26, 2014, and expires May 12, 2016.

19. In January 2014, EPA performed a Sanitary Sewer Overflow (“SSO”) Inspection (hereafter “the EPA POTW inspection”) of the City’s POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City’s compliance with its NPDES permit and the CWA.

20. During the EPA POTW inspection, the inspector completed the SSO inspection checklist, reviewed the City’s records related to self-monitoring, preventative maintenance, and cleaning, reviewed the City’s records for sanitary sewer overflows and records, and observed the POTW, including visually inspecting manholes and lift stations.

21. Respondent’s NPDES permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the NPDES permit as one or more “outfalls,” to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permit.

22. Within the past five years, Respondent has discharged untreated wastewater to waters of the United States from manhole locations, specifically 7070MH013 and 7070MH019, within the Respondent's POTW. None of the manhole locations where the discharges occurred are numbered outfalls identified in Respondent's NPDES permit.

23. Of the unauthorized discharges described in Paragraph 22, two (2) discharged untreated wastewater to Dardenne Creek. Dardenne Creek is a "navigable water" and "water of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation, 40 C.F.R. § 122.2.

24. EPA finds that each unauthorized discharge identified in Paragraphs 22 and 23 above, is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, and as such is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Allegations of Violation

25. The facts stated in Paragraphs 12 through 24, above, are herein incorporated.

#### **Unpermitted Discharges**

26. Upon review of the City's SSO Reports submitted to MDNR described in Paragraph 20, the City has discharged pollutants from the City's POTW at locations other than Outfall 001 on at least two (2) occasions in September 2014, and upon information and belief, the unauthorized discharges continue to the present. These unauthorized discharges are not permitted or otherwise authorized by the CWA.

27. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Violation of Respondent's NPDES Permit**

28. Pursuant to 40 C.F.R. § 122.41(e), Respondent's NPDES permit contains the following Standard Condition at Part I.B.3: "Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions... ." Part I.B.4 of Respondent's NPDES permit requires that "[t]he permittee shall take all necessary steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit or set forth in the Missouri Clean Water Law and Regulation... ." (hereafter Part I.B.3 and 4 collectively referred to as the "Proper Operation and Maintenance Conditions").

29. Part A, Effluent Limitations and Monitoring Requirements, of Respondent's NPDES permit authorizes discharges *only* from Outfall 001 at the wastewater treatment facility.

30. Paragraph 5, Standard Conditions, of Respondent's NPDES permit prohibits any bypass or shut down of facilities or tributary sewer system that results in a violation of permit limits or conditions, except under circumstances not applicable here.

31. The unauthorized discharges alleged in Paragraphs 22 and 23 above, resulted, in whole or in part, from Respondent's failure to properly operate and maintain the POTW in compliance with Respondent's NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

32. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations and considering the information currently available alleged in the paragraphs above, EPA finds that a reasonable time for Respondent to comply with the requirement of Section 301(a) of the CWA to address the SSOs is by no later than December 31, 2016.

#### **IV. Section 309(a) Order for Compliance on Consent**

33. Based on the EPA FINDINGS set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), IT IS HEREBY ORDERED AND AGREED TO:

Consistent with EPA's finding in Paragraph 32 above, Respondent agrees to take all measures necessary with the goal of eliminating unauthorized discharges of untreated wastewater at manholes 7070MH013 and 7070MH019 to waters of the United States by no later than December 31, 2016. Specifically, to achieve that goal for purposes of this Order, Respondent agrees to complete a Sanitary Sewer Evaluation Survey and undertake sewer rehabilitation and improvement projects related to manholes 7070MH013 and 7070MH019. Respondent shall submit a written certification to EPA, with a copy to MDNR, that all corrective measures required pursuant to this Order have been completed.

34. After review of the certification and supporting information submitted by Respondent, EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate. Alternatively, EPA may accept the certification and terminate this Order pursuant to Paragraph 48 below.

35. The City shall at all times comply with requirements established by the state of Missouri regarding the repair, construction, and operation of facilities associated with the City's POTW, including, but not limited to, any requirements for work to be performed by certified or licensed professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this Order, the City shall allocate adequate time and resources to comply with applicable state requirements.

## V. Reporting

36. *Reporting to EPA and MDNR:* In addition to the submittals required by Paragraph 33 above, the City shall submit to EPA, with a copy to MDNR, a semi-annual report describing the actions the City has taken to comply with the terms of this Order. The report is due July 28, 2015. The report shall include, at a minimum:

- a. *Overflow Reports.* The City shall include copies of reports submitted to MDNR reporting bypasses, SSOs or building backups. The report should include date of occurrence, location, cause, and receiving water; and
- b. *Compliance Progress.* The report shall include a detailed update on the progress of the compliance measures, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period.

37. All documents, including certifications, required to be submitted to EPA by this Order, shall be submitted by electronic mail to:

bruno.jodi@epa.gov

Jodi Bruno, or her successor  
U.S. Environmental Protection Agency – Region 7  
Water, Wetlands and Pesticides Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph.

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

Paul Dickerson, or his successor  
Chief, Water Pollution Compliance and Enforcement Section  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102-0176.

## VI. General Provisions

39. Failure to comply with the terms of the Section 309(a)(3) Compliance Order may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C.

§ 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, an United States District Court may impose civil penalties if the court determines that you have violated the Act and failed to comply with the terms of the Order.

#### **Reservation of Rights**

40. 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 Sections 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. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

41. With respect to matters not addressed in this Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and/or other legal remedies allowed by law.

42. 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 CW A, 33 U.S.C. § 1319.

43. Subject to the limitations of Paragraph 41, above, Respondent reserves the right to contest liability and/or any penalties sought in any subsequent action filed by EPA to seek penalties for violation of this Order on Consent, and reserves the right to contest liability and/or penalties in any subsequent action filed by EPA for any violations alleged in the Findings, above.

#### **Access and Requests for Information**

44. 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**

45. 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.

### Modification

46. At EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by EPA by written notice to Respondent, without further formal amendment to the Order. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

### Effective Date

47. 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.

### Termination

48. 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 the City has complied with the requirements of Section IV of this Order and demonstrated general compliance as determined by EPA with the terms of its permits.

### Signatories

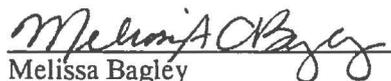
49. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

**For the Complainant, United States Environmental Protection Agency, Region 7:**

Issued this 15<sup>th</sup> day of April, 2015.



Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency – Region 7



Melissa Bagley  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 7

**For the Respondent, City of St. Peters, Missouri:**



Signature

April 13, 2015

Date

William P. Charnisky

Name

City Administrator

Title

**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 Docket Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

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 Leonard B. Pagano  
Mayor, St. Peters  
100 Ecology Drive  
St. Peters, Missouri 63376

and by first class mail to:

Paul Dickerson, Chief, or his successor  
Water Pollution Compliance and Enforcement Section  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102-0176.

4/6/15  
Date

*Carah A. Moreno*