

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-07-2007-0092
)
CITY OF OLYMPIAN VILLAGE,)
MISSOURI,)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
)
Respondent.)
)
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. §1319(a))
)
)
_____)

I. Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are 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. The Respondent is the City of Olympian Village, Missouri, (hereafter “Respondent” or “City of Olympian Village”) which owns and operates a publicly owned treatment works (“POTW”) that treats wastewater from domestic and commercial sources.

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, 42 U.S.C. § 1342, 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. Section 504(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

5. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122 which set forth minimum requirements for NPDES permits. Under 40 C.F.R. § 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States. Further, EPA promulgated regulations codified at 40 C.F.R. Part 136 that set forth test procedures for quantitative and qualitative data to be submitted under NPDES permits.

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. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that states may be authorized to administer the NPDES program. Authorized state programs must comply with minimum NPDES program requirements under 40 C.F.R. Part 123, which incorporates 40 C.F.R. Part 122 NPDES permit requirements.

8. The Missouri Department of Natural Resources (“MDNR”) is the agency within the State of Missouri with the authority to administer the federal NPDES Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and its implementing regulations. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

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 Section 405(d)(1) of the CWA, 33 U.S.C. 1345(d)(1), the EPA promulgated regulations codified at 40 C.F.R. Part 501 and Part 503 governing the standards for the use or disposal of sewage sludge.

11. The sewage sludge management program for the State of Missouri has not been approved for delegation under Section 405(f) of the CWA and its implementing regulations codified under 40 C.F.R. Part 501. The EPA remains responsible for the enforcement of the requirements of the Sludge Management Program until such time as the State of Missouri is authorized to administer the Sludge Management Program in its entirety.

12. EPA has notified the State of Missouri regarding this proposed action by mailing a copy of this document to the Director, Division of Environmental Quality, Missouri Department of Natural Resources.

III. Findings of Fact

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

14. Respondent owns and operates a publicly owned wastewater treatment works (“POTW”) that receives and treats wastewater from various domestic and commercial sources.

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

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

17. The Respondent’s POTW discharges pollutants into an unnamed tributary of Platin Creek, which thereafter flows into Platin Creek, a tributary of the Mississippi River.

18. The Olympian Village’s POTW generates “sewage sludge,” as defined by 40 C.F.R. § 503.9(w), that is hauled by a contract septic hauler to other treatment facilities for final disposal.

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

20. MDNR issued a NPDES permit, No. MO-0101109 (the “Permit” or “Respondent’s Permit”) to the Respondent, effective March 25, 2005, for discharges from its POTW into the unnamed tributary to Platin Creek. Respondent’s Permit expires on March 24, 2010.

21. On February 5 - 8, 2007, the EPA performed an inspection of the Olympian Village wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). EPA’s inspector documented observations of the operation of Respondent’s POTW and performed sampling of the POTW’s discharge. At the conclusion of the inspection, EPA’s inspector left a Notice of Potential Violations with the operator of the POTW. By correspondence dated February 16, 2007, Respondent provided EPA with a response to the Notice of Potential Violations.

IV. Findings of Violation

Discharge of Sewage Sludge to Receiving Stream

22. Section C of Respondent’s NPDES permit contains Special Conditions applicable to Respondent’s facility. Section C(5) of Respondent’s NPDES Permit contains water quality criteria applicable to all waters of the state at all times including

mixing zones. Section C(5)(a) of Respondent's NPDES permit requires that waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses.

23. At the time of the February 2007, inspection EPA observed that sewage sludge from the wastewater treatment plant was being lost to the receiving stream. The sludge discharged into the receiving stream was continuously visible downstream for approximately 700 feet from Outfall # 001.

24. Samples collected by EPA of effluent from the facility, Outfall # 001, at the time of the inspection revealed the following: the five-day biochemical oxygen demand (BOD5) average level for the three days of EPA sampling was 88.2 mg/l; the maximum BOD5 level was 193 mg/l; the total suspended solids (TSS) average for the three days of EPA sampling was 312 mg/l; the maximum TSS value was 776 mg/l. Respondent's NPDES permit limits BOD5 and TSS each to a weekly average of 45 mg/l.

25. Respondent's failure to meet the criteria set forth in Section C(5)(a) of Respondent's NPDES Permit is a violation of the terms and conditions of Respondent's NPDES Permit and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Improper Sludge Management

26. Section C(4), Sludge and Biosolids Use for Domestic Wastewater Treatment Facilities, of Respondent's NPDES permit states:

(a) Permittee shall comply with the pollutant limitations, monitoring, reporting, and other requirements in accordance with the attached permit Standard Conditions.

(b) If sludge is not removed by a contract hauler, permittee is authorized to land apply biosolids. Permit Standard Conditions, Part III shall apply to the land application of biosolids. Permittee shall notify the department at least 180 days prior to the planned removal of biosolids. The department may require submittal of a biosolids management plan for department review and approval as determined appropriate on a case-by-case basis.

27. Part III, Sludge & Biosolids from Domestic Wastewater Treatment Facilities, of the Standard Conditions of Respondent's NPDES permit includes Section A(3)(b), Sludge and Biosolids Use and Disposal Practices, which states:

Permittee shall not exceed the design sludge volume listed in the facility description and shall not use sludge disposal methods that are not listed in the facility description, without prior approval of the permitting authority.

28. At the time of the February 2007, inspection EPA observed that a large accumulation of solids in the treatment system at Respondent's facility was leading to the ongoing discharge of sludge to the receiving stream.

29. Respondent's failure to remove sludge on a regular basis pursuant to the requirement of Section C(4) and failure to maintain appropriate sludge volume as required in Part III Section A(3)(b) of Respondent's NPDES permit is a violation of the terms and conditions of Respondent's NPDES Permit and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Failure to Comply with Sampling Procedure Requirements

30. Part I, General Conditions, of Respondent's NPDES permit specifies sample collection and analysis procedures. These requirements are also set forth in 40 C.F.R. § 136.3.

31. The allowable sample holding time for BOD5 is 24 hours from the time the last aliquot of a 24-hour composite sample is collected. The EPA inspection revealed that for the sample collected December 25-26, 2006, the contract laboratory did not receive the sample until December 29, 2006.

32. Part A, Effluent Limitations and Monitoring Requirements, of Respondent's Permit for Outfall # 001 requires grab samples for monitoring pH. The General Conditions of Respondent's NPDES Permit and the regulations at 40 C.F.R. § 136.3 require that a pH analysis be performed within 15 minutes of sample collection.

33. The EPA inspection revealed that Respondent used composite samples rather than grab samples to sample pH from approximately February 2005 to February 2007. In addition, Respondent submitted pH samples to a contract laboratory which resulted in a holding time of approximately 24 hours.

34. Respondent's exceedance of the allowable holding time for BOD5 samples, and failure to collect a grab sample for pH and complete the analysis within 15 minutes are violations the terms and conditions of Respondent's NPDES Permit and as such, are a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Failure to Mark Outfall

35. Section C(1) of the Special Conditions portion of Respondent's NPDES permit requires that all outfalls must be clearly marked in the field.

36. At the time of the February 2007, inspection EPA observed that Respondent's outfall to the receiving stream was not marked.

37. Respondent's failure to meet the criteria set forth in Section C(1) of Respondent's NPDES Permit is a violation of the terms and conditions of Respondent's

NPDES Permit and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

V. 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.

38. Within thirty (30) days of the Effective Date of this Order, Respondent shall submit documentation to EPA, with a copy to MDNR, evidencing all actions taken to remove sludge or solids deposits in the unnamed tributary of Plattin Creek, and also in Plattin Creek if necessary, resulting from discharges from Respondent's POTW. The documentation shall include a summary of all work performed; contacts with state, local or federal agencies, including a description of any work performed at the direction of or after consultation with such agencies; and all sampling and analysis results, photos, documentation of clean up and removal procedures, disposal actions, volume calculations and records, and cost of such activities.

39. Immediately upon the Effective Date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES permit. Within thirty (30) days of the Effective Date of this Order, Respondent shall submit a written report to EPA, with a copy to MDNR, detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

40. In addition to the reports required in Paragraphs 38 and 39 above, within sixty (60) days of the Effective Date of this Order the Respondent shall develop and submit to EPA for review and approval an Operation and Maintenance Plan for the POTW to ensure proper facility operation and maintenance in compliance with Respondent's NPDES permit. Specifically, the Operation and Maintenance Plan shall include provisions for, but not be limited to:

- (a) Preventative and routine maintenance schedules and procedures;
- (b) Plant operation and control strategies to include control parameters, operational control tests, and actions to be taken in response to such tests;
- (c) Establishment of a sludge management and sludge wasting and hauling scheme, including a scheme to waste sludge to the drying beds or to be hauled in liquid form;
- (d) A process for determining and measuring the maximum levels of sludge to be accumulated in the aeration/clarifiers systems;
- (e) Preparation and maintenance of operational records;
- (f) Staffing and Organization;

- (g) Implementation schedule; and
- (h) A specific description of how the financial budget for Respondent's facility adequately addresses the operation of the facility and sludge disposal costs.

41. For one year from the Effective Date of this Order, Respondent shall submit to EPA, with a copy to MDNR, all monthly monitoring and sampling information including documentation that all sampling and analyses are performed in accordance with the requirements contained in the Respondent's permit in a quarterly report, due on: December 21, 2007; March 21, 2008; June 21, 2008; and September 21, 2008.

VI. Submissions

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

Berla Johnson (WWPD/WENF)
Environmental Scientist
Water, Wetlands and Pesticides Division
EPA Region VII
901 North Fifth Street
Kansas City, Kansas 66101

43. A copy of documents to be submitted to the EPA by this Order, shall be submitted by mail to:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

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

VII. General Provisions

Effect of Compliance with the terms of this Order for Compliance

44. 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 CWA, 33 U.S.C. § 1319.

45. 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 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

46. 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

46. 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.

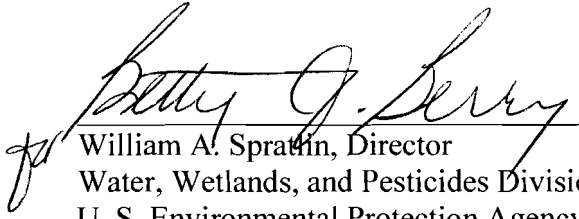
Effective Date

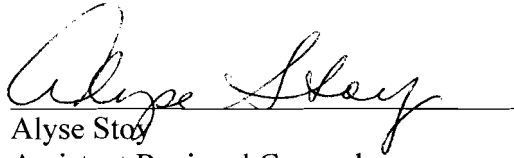
47. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

48. 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 20th day of September, 2007.


William A. Spratin, Director
Water, Wetlands, and Pesticides Division
U. S. Environmental Protection Agency Region VII


Alyse Stoe
Assistant Regional Counsel
U. S. Environmental Protection Agency Region VII

copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region VII, 901 N. 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

The Honorable Robert Link
City of Olympian Village
205 Kronos Drive
DeSoto, Missouri 63020

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Missouri:

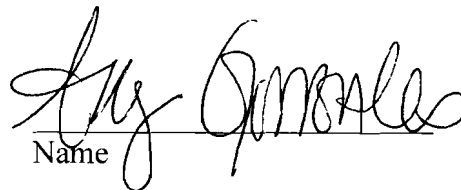
Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

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

9/25/07

Date



Name