

2014 SEP 30 PM 3: 31

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
Weston, Missouri (The City of) ) Docket No. CWA-07-2014-0077  
 )  
Respondent ) FINDINGS OF VIOLATION AND  
 ) ORDER FOR COMPLIANCE  
 ) ON CONSENT  
Proceedings under Section 309(a) of the )  
Clean Water Act, 33 U.S.C. § 1319(a) )  
\_\_\_\_\_ )

**Preliminary Statement**

1. This Administrative Order for Compliance on Consent (“Order on Consent”) is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the City of Weston, Missouri (“Respondent” or “City”), a municipality chartered under the laws of the State of Missouri (“Missouri”). Respondent is the owner and/or operator of the Publicly Owned Treatment Works (“POTW”), located in Platte County, Missouri.

3. The EPA, together with the City enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent, through entering into this Order, to address noncompliance by the City in violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the City to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent. Respondent also 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 on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

8. The Missouri Department of Natural Resources (“MDNR”) is the 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 EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### **EPA’s General Allegations**

9. The City is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources. The POTW includes a wastewater collection system, various pump stations and a four-cell wastewater treatment lagoon consisting of two aerated cells operated in series followed by two facultative cells operated in series, which is located on Kirk Road in Weston, Missouri 64098.

11. The City’s POTW discharges to the Missouri River, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

13. 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.

14. The MDNR issued NPDES Permit No. MO-0031585 to the City for discharges from its POTW to the Missouri River. The permit became effective October 23, 2009 with an expiration date of October 22, 2014.

15. On November 5-8, 2013, an EPA representative performed a Compliance Sampling Inspection (hereafter "EPA inspection") of the City's wastewater treatment facility 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.

16. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations regarding the City's POTW for the period from 2009 through the date of the EPA inspection included, but were not limited to:

- a. Discharges of effluent in violation of its NPDES permit limitations on numerous occasions;
- b. Numerous gaps and omissions in monitoring and reporting, including failure to properly measure and report influent and effluent flows on numerous occasions;
- c. Failure to properly complete numerous Monthly Monitoring Reports ("MMRs") and failure to submit some MMRs; and
- d. Failure to maintain monitoring information and records for the period of time required by the NPDES permit.

17. During the EPA inspection, the City informed the inspector that a gap in MMR reporting from July 1 through November 30, 2011 was due to flooding from the Missouri River and that during this time the lagoon and effluent lift station were submerged.

18. By letter dated March 27, 2014, the EPA sent to the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, which the City received on or about March 31, 2014.

19. By letter dated April 14, 2014, the City responded to EPA's Request for Information. The City's response included, among other information, an explanation of repairs to the wastewater treatment plant following the 2011 flood.

**EPA's Specific Allegations**

20. The facts stated in Paragraphs 1 through 19, above, are herein incorporated.

**Count 1  
Failure to Comply with Influent Monitoring Requirements**

21. The Influent Monitoring Requirements section of the City's NPDES permit establishes monitoring requirements for Influent, including the following:

- a. Five-Day Biochemical Oxygen Demand ("BOD<sub>5</sub>") – once per quarter in the months of March, June, September, and December; and
- b. Total Suspended Solids ("TSS") – once per quarter in the months of March, June, September, and December.

22. The EPA inspection, review of the City's MMRs and review of the City's response to the Request for Information revealed that, excluding the period from July 2011 through June 2012 when the City indicated its wastewater treatment plant was flooded and subsequent repairs were being made, the City failed to monitor for and report influent BOD<sub>5</sub> and TSS in December 2009, March, June and September 2010, June 2011, and September 2012.

23. The City's failure to comply with the influent monitoring requirements of its NPDES permit, as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 2  
Failure to Comply with Effluent Monitoring Requirements**

24. The Effluent Limitations and Monitoring Requirements section of the City's NPDES permit establishes effluent monitoring requirements for Outfall 001, including the following:

- a. Flow – 24 hour total once per day;
- b. BOD<sub>5</sub> – 24 hour composite once per month;
- c. TSS – 24 hour composite once per month;
- d. pH – grab sample once per month;
- e. Ammonia as N – grab sample once per month;
- f. Temperature – grab sample once per month;

- g. Oil & Grease (“O&G”) – grab sample once per month; and
- h. Fecal Coliform – grab sample once per month from April 1<sup>st</sup> through October 31<sup>st</sup>.

25. The EPA inspection, review of the City’s MMRs and review of the City’s response to the Request for Information revealed that since October 2009, excluding the period from July 2011 through June 2012 when the City indicated its wastewater treatment plant was flooded and subsequent repairs were being made, the City violated the effluent monitoring requirements of its NPDES permit, as follows:

- a. The City incorrectly reported effluent flow values on numerous days between October 2009 and March 2014;
- b. The City failed to monitor and report effluent flow on numerous days between October 2009 and March 2014;
- c. The City failed to monitor and report effluent BOD<sub>5</sub> concentrations in June and October 2010, and June 2011;
- d. The City failed to monitor and report effluent TSS concentrations in June and October 2010, and June 2011;
- e. The City failed to monitor and report effluent pH values in September 2013;
- f. The City failed to monitor and report O&G concentration in the effluent in October, November and December 2009, June and October 2010, June 2011, and June 2013; and
- g. The City failed to monitor and report Fecal Coliform concentrations in the effluent in April and June through September 2010, May and June 2011, and August, September and October 2012.

26. The City’s failure to comply with the City’s NPDES permit effluent monitoring requirements of its NPDES permit, as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 3  
Failure to Comply with Effluent Limitations**

27. The Effluent Limitations and Monitoring Requirements section of the City’s NPDES permit establishes effluent limitations for Outfall 001, including the following:

- a. BOD<sub>5</sub> – weekly average of 65 mg/L, monthly average of 45 mg/L and removal efficiency of 65%;

- b. TSS – weekly average of 110 mg/L, monthly average of 70 mg/L and removal efficiency of 65%;
- c. pH – maintained at or above 6.0 pH units;
- d. Ammonia as N – monitoring requirement only;
- e. Temperature – monitoring requirement only;
- f. O&G – daily maximum of 15 mg/L and monthly average of 10 mg/L; and
- g. Fecal Coliform – daily maximum of 1000 per 100 ml and monthly geometric average of 400 per 100 ml.

28. The EPA inspection, review of the City's monthly monitoring reports submitted to MDNR and review of the City's response to the Request for Information revealed that since October 2009, excluding the period from July 2011 through June 2012 when the City indicated its wastewater treatment plant was flooded and subsequent repairs were being made, the City violated the effluent limitations of its NPDES permit, as follows:

- a. The City exceeded the permitted weekly average effluent BOD<sub>5</sub> concentration in February 2010, February 2011, and October 2012;
- b. The City exceeded the permitted monthly average effluent BOD<sub>5</sub> concentration in October 2009, January and February 2010, February 2011, July, October and December 2012, and March 2014;
- c. The City failed to demonstrate compliance with the required 65% removal for BOD<sub>5</sub> in July 2012;
- d. The City exceeded the permitted weekly average effluent TSS concentration in July 2010, May 2011, July and September 2012, and July, August and September 2013;
- e. The City exceeded the permitted monthly average effluent TSS concentration in October 2009, July 2010, May 2011, July, September, October, November and December 2012, July, August and September 2013, and March 2014;
- f. The City failed to demonstrate compliance with the required 65% removal for TSS in July and August 2010, March, April and May 2011, July through December 2012, May through September 2013, and March 2014;
- g. The City reported effluent pH values less than the permitted daily minimum 4 times in 2010, 1 time in 2011, and 1 time in 2014;

- h. The City exceeded the permitted daily maximum effluent O&G concentration in February 2010;
- i. The City exceeded the permitted monthly average effluent O&G concentration in February 2010, and October 2013;
- j. The City exceeded the permitted daily maximum effluent Fecal Coliform concentration in July 2012, and September 2013; and
- k. The City exceeded the permitted monthly average effluent Fecal Coliform concentration in July 2012, September and October 2013.

29. The City's failure to comply with the City's NPDES permit effluent limitations as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Reasonable Time to Achieve Compliance**

30. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that three (3) years is a reasonable time for Respondent to comply with the terms and conditions of its NPDES Permit, MO-0031585.

#### **Order for Compliance**

31. Based on the EPA's General and Specific Allegations set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS, and the Respondent AGREES, to take the actions described below.

32. In accordance with this Order, the City shall take whatever actions are 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.

33. *Immediate Compliance Actions:* Within 60 days of the receipt of this Order, the City shall submit to EPA, with a copy to MDNR, a report certifying that the City has completed the following measures for the POTW to improve MMR reporting and lagoon operation/wastewater treatment while additional actions are performed by the City to achieve long-term compliance with its NPDES permit:

- a. submit application for electronic MMR reporting to the MDNR;
- b. installation of an effluent baffle in the cell #4 effluent structure;

- c. repair and installation of four (4) aerators providing a minimum of 30 installed horsepower in cell #1; and
- d. repair and installation of two (2) aerators providing a minimum of 15 installed horsepower in cell #2.

34. *Interim Compliance Actions:* As soon as possible, but no later than October 28, 2015, the City shall submit to the EPA, with a copy to the MDNR, a report certifying that the City has completed the following measures to continue to improve MMR reporting and lagoon operation/wastewater treatment while additional actions are performed by the City to achieve long-term compliance with its NPDES permit:

- a. training of appropriate City staff on the use of the MDNR's electronic MMR system;
- b. completion of wastewater treatment plant operator training courses and licensure testing by appropriate City personnel, as required pursuant to Missouri laws;
- c. installation and use of an effluent flow measurement device at the City's wastewater treatment plant; and
- d. repair and calibration, or replacement, of the DO and pH meter(s) for analysis of wastewater influent and effluent.

35. *Long-term NPDES Permit Compliance Measures:* As soon as possible, but no later than October 28, 2017, the City shall certify that it has taken all measures necessary to achieve compliance with its NPDES permit. The City shall submit semi-annual reports in compliance with Paragraphs 38 through 41, below, describing progress made toward achieving compliance. The City's expected schedule for achieving compliance includes the following interim and final milestones:

- a. October 2014 – Engineer under contract for completing an Engineering Report;
- b. November 2014 – State Revolving Fund application submitted to MDNR for 2016 Intended Use Funding;
- c. March 2015 – Engineering Report completed and submitted to Missouri Water and Wastewater Review Committee for funding and the MDNR for review/comment;
- d. April through November 2015 – Design of required wastewater treatment plant improvements;



- e. November 2015 – submit design and construction plans and specifications for review and approval by the MDNR;
- f. May through June 2016 – solicit bids and award construction contract; and
- g. July 2016 through September 2017 – construct, startup and place into service the chosen project.

36. The City shall at all times comply with requirements established by the State of Missouri statutes and regulations 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 on Consent, the City shall allocate adequate time and resources to comply with applicable state requirements.

37. After review of the information submitted by the City pursuant to the above Paragraphs, the 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.

#### **Submissions**

38. *Reporting to EPA and MDNR:* In addition to the submittals required by Paragraph 33 above, the City shall submit to the EPA, with a copy to the MDNR, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every April 28 and October 28 until termination of this Order pursuant to Paragraph 47 below; the first report is due April 28, 2015. The City's report shall include, at a minimum:

- a. A listing of NPDES permit violations, if any, that occurred during the reporting period;
- b. A description of the actions taken by the City to mitigate and minimize or prevent future recurrences of permit violations, if any, that occurred during the reporting period; and
- c. For submittal to the EPA only, a copy of that reporting period's MMRs. The City must submit MMRs to MDNR as required by its NPDES permit.

39. All submissions by to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

*I certify that the City of Weston has complied with all the applicable requirements of the Order for Compliance. I also 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 violations.*

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

Wayne Dillard, P.E., or his successor  
Environmental Engineer  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

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

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

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order**

42. Compliance with the terms of this Order shall not relieve the City 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.

43. 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. The 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. 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 CWA for any violation whatsoever.

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

44. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect the City's facility, and/or to request additional information from the City, 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 the City, is held by federal judicial authority to be invalid, the application to the City of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

### **Effective Date**

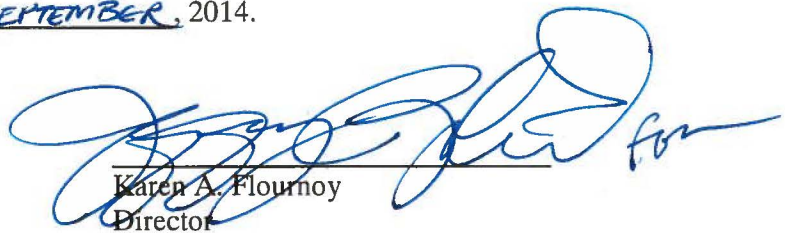
46. This Order shall be effective upon receipt by the City of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

### **Termination**

47. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

**FOR THE COMPLAINANT,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7:**

Issued this 30 day of SEPTEMBER, 2014.



Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division



Patricia Gillispie Miller  
Senior Counsel  
Office of Regional Counsel



**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 on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Howard Hellebuyck, Mayor  
City of Weston  
526 Main Street  
Weston, Missouri 64098

and via first class mail to:

Paul Dickerson, Environmental Manager  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

Andrea Collier, Director  
Kansas City Regional Office  
500 NE Colbern Road  
Lee's Summit, MO 64086-4710

10/1/14  
Date

Kathy Robinson  
Signature