

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

2013 JAN -9 PM 1:33

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. CWA-07-2012-0044
)
MOSCOW MILLS, MISSOURI,)
)
)
) ADMINISTRATIVE ORDER FOR
) COMPLIANCE ON CONSENT
)
Respondent,)
)
)
Proceedings under Sections 308(a) and)
309(a)(3) of the Clean Water Act,)
33 U.S.C. §§ 1318(a) and 1319(a)(3))
_____)

I. Preliminary Statement

1. This Administrative Order for Compliance on Consent ("Order on Consent") is issued by the United States Environmental Protection Agency ("EPA") to the City of Moscow Mills, Missouri ("City" or "Respondent"), pursuant to the authority vested in the Administrator of the EPA by Sections 308 and Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 and 1319(a)(3), as amended. This authority has been redelegated by the Administrator to the Regional Administrator of the EPA, Region 7, and further delegated to the Director of Region 7's Water, Wetlands, and Pesticides Division.

2. The EPA, together with the City, enter into this Section 309(a)(3) Order on Consent in order to carry 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."

3. It is the Parties' intent through entering into this Order on Consent to address discharges of pollutants by the City into the waters of the United States in violation of its National Pollutant Discharge Elimination System ("NPDES") permits. 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 permits.

4. By entering into this Order on Consent, 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 also waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

II. Statutory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.

7. 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. Section 308 of the CWA, 33 U.S.C. § 1318, authorizes the EPA to request and collect information in order to, among other matters, determine whether the owner of a point source is in compliance with the CWA.

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

III. EPA Findings

EPA's Findings of Fact and Law

9. The City of Moscow Mills 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).

10. The City owns and operates two POTWs that receive and treat wastewater from various domestic, commercial and industrial sources.

11. At all relevant times, Respondent has owned and operated the Crooked Creek Waste Water Treatment Facility (hereafter "Crooked Creek WWTF") and the Northwest Area Waste Water Treatment Facility (hereafter "Northwest WWTF") and their associated sewer collection and transmission systems, which receive and treat wastewater from residential and commercial connections within Moscow Mills, Missouri and haul septic waste, which together are a Publicly Owned Treatment Works ("POTW"), as defined by 40 C.F.R. § 403.3(q).

12. The Crooked Creek WWTP discharges into Crooked Creek, a tributary to the Cuivre River, and the Northwest WWTP discharges into an unnamed tributary of the Cuivre River, then to the Cuivre River.

13. The Cuivre River, its unnamed tributary, and Crooked Creek are “navigable waters” of the United States as defined by Section 502 of the CWA, 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

14. The effluent from the City’s POTW are “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 502(6).

15. 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.

16. 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.

Crooked Creek WWTF

17. On May 18, 2007, the MDNR granted NPDES permit No. MO-0129852 (hereafter “Crooked Creek NPDES permit”), to the Respondent for discharges from the Crooked Creek WWTF into Crooked Creek, a tributary of the Cuivre River, subject to compliance with conditions and limitations set forth in the NPDES permit. The Crooked Creek NPDES permit has an expiration date of May 17, 2012. The City filed an application with the MDNR to renew the NPDES permit in February 2012, and the permit has been administratively extended.

18. Section A of Respondent’s Crooked Creek NPDES permit sets effluent limitations at Outfall 001 for pollutants, including Five-day Biological Oxygen Demand (“BOD₅”), Total Suspended Solids (“TSS”), Ammonia Nitrogen, Dissolved Oxygen (“DO”), and Fecal Coliform bacteria (applicable between April 1 and October 31 of each year), and requires weekly monitoring for these parameters.

Northwest WWTF

19. On February 6, 2009, the MDNR granted NPDES permit No. MO-0119709 (hereafter “Northwest NPDES permit”), to the Respondent for discharges from the Northwest WWTF to an unnamed tributary of the Cuivre River, subject to compliance with conditions and limitations set forth in the NPDES permit. The Northwest NPDES permit has an expiration date of February 5, 2014.

20. Section A of Respondent’s Northwest NPDES permit sets effluent limitations for specified pollutant parameters, including TSS and Fecal Coliform bacteria (applicable between April 1 and October 31 of each year), and requires monthly monitoring for these parameters. Section A also requires weekly monitoring of plant effluent flows.

21. On October 17, through October 20, 2011, the EPA performed an inspection of the Respondent's POTWs under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). At the conclusion of the inspection, the City was issued a Notice of Potential Violation ("NOPV") indicating that the inspection found that the City had violated provisions of both the Crooked Creek and Northwest NPDES permits. A copy of the inspection report for each WWTF was sent to the MDNR and the City on or about January 19, 2012.

22. During the EPA Inspection, the inspector collected wastewater samples from each WWTF, reviewed the City's records related to the NPDES permits, interviewed City personnel, and observed the WWTFs and the receiving streams to which they discharge.

23. The City's undated letter in response to the NOPVs indicated that monitoring and reporting deficiencies noted in the NOPV were being corrected and that the City was considering options to address effluent violations at the WWTFs, including redirecting flows away from the Northwest WWTF to the Crooked Creek WWTF

EPA's Findings of Violation

24. The facts stated in Paragraphs 9 through 23, above, are herein incorporated.

25. Based on observations documented during the EPA inspection, review of information provided by the City in response to the NOPVs, and other information reportable by the City pursuant to its NPDES permits, the EPA finds that the Respondent has violated the terms and conditions of its Crooked Creek WWTF and Northwest WWTP NPDES permits, including, but not limited to, the following.

Crooked Creek WWTF

26. Respondent violated Section A of the Crooked Creek NPDES permit by:

- a. *BOD₅*: discharging effluent during the 47 months between October 2008 and August 2012 exceeding the weekly average concentration limits six times, the monthly average concentration limits 10 times, and the weekly and monthly average mass limits one time each;
- b. *TSS*: discharging effluent during the 47 months between October 2008 and August 2012 exceeding the weekly average concentration limits 11 times, the monthly average concentration limits 11 times, and the weekly and monthly average mass limits two times each;
- c. *Ammonia Nitrogen*: discharging effluent during the 34 months between October 2008 and March 2012 exceeding the daily maximum concentration limits 23 times, the monthly average concentration limits 19 times, the daily maximum mass limits nine times, and the monthly average mass limits six times;
- d. *DO*: discharging effluent during October 2008, November 2008, and January through April 2009 above the daily minimum concentration limits;

- e. *Fecal Coliform*: discharging effluent during April 2009 exceeding the daily maximum concentration limits, and during July 2011, and August 2011 exceeding the daily maximum and monthly average concentration limits.

Northwest Area WWTF

27. Respondent violated Section A of the Northwest Area NPDES permit by:

- a. *TSS*: discharging effluent during October 2010 exceeding weekly and monthly average concentration limits;
- b. *Ammonia Nitrogen*: discharging effluent during February 2012 and March 2012 exceeding the daily maximum and monthly average concentration limits;
- c. *Fecal Coliform*: discharging effluent during August 2011 exceeding the daily maximum and monthly average concentration limits;
- d. *pH*: discharging effluent during May, July through October 2007, and February, May and September 2008 exceeding the daily maximum limit; and
- e. *Flow Monitoring*: failing to accurately measure and report effluent flows through failure to periodically calibrate or verify flow measurement techniques.

28. The EPA finds that as a result of the City's failure to comply with the effluent limitations in its NPDES permits Respondent has been and continues to be in noncompliance with the requirements of Part A of both its Crooked Creek and Northwest NPDES permits.

29. The EPA finds that each of Respondent's violations described in Paragraphs 26 through 28, above, is a violation of the terms and conditions of its Crooked Creek and Northwest NPDES permits, MO0129852 and MO0119709, respectively, issued pursuant to 402 of the CWA, 33 U.S.C. §1342, and implementing regulations, 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, and considering further that Respondent may undertake to modify the POTWs in order to comply with the terms and conditions addressed by Section A of both its Crooked Creek and Northwest NPDES permit, MO0129852 and MO0119709, the EPA finds that six (6) years is a reasonable time for Respondent to comply with the terms and conditions addressed by Section A of both its Crooked Creek and Northwest NPDES permit.

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

31. Based on the EPA's Findings 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, upon admitting jurisdiction and neither admitting or denying the factual and legal conclusions contained in Section III, EPA Findings, above, AGREES to take, the actions described below:

32. In accordance with this Order on Consent, the City shall identify and implement necessary actions to correct the deficiencies cited above, and to comply with the conditions and limitations of its NPDES permits.

33. *Compliance Plan.* By no later than December 15, 2012, the City shall submit to the EPA, with a copy to the MDNR, a comprehensive written plan (the "Compliance Plan") for achieving compliance with the City's permitted effluent limitations at the Crooked Creek and Northwest WWTFs.

- a. The Compliance Plan shall describe in detail the specific actions to be taken or work to be completed, and why such actions or work are sufficient to comply with the effluent limitations prescribed by the City's NPDES permits.
- b. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than December 31, 2018. The Compliance Plan shall follow the general schedule of activities set for in the City's preliminary activity proposal, attached hereto as Appendix A.
- c. The EPA will promptly review, and may provide comments on, the City's Compliance Plan.

34. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, the City shall submit a written certification to the EPA, with a copy to the MDNR, that it has completed all actions required pursuant to this Order on Consent.

35. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Order on Consent, the EPA determines that additional information is needed and/or additional corrective measures or deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 51 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

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.

V. Section 308 Information Demand

37. Based on the EPA's Findings set forth above, and pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), the Respondent is required to make the following submissions:

38. *Reporting to the EPA and the MDNR:* In addition to the submittals required by Paragraphs 33 and 34 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 on Consent. These reports are due every January 28 and July 28 until termination of this Order on Consent pursuant to Paragraph 53 below; the first report is due July 28, 2013. These reports shall include, at a minimum:

- a. *Compliance Plan Progress.* Until submittal of the written certification of completion required pursuant to Paragraph 34, above, each report shall include a detailed update on the progress of the Compliance Plan, including a description of activities completed, those scheduled for the next reporting period, and milestones met during the reporting period.
- b. *Discharge Monitoring Reports.* Each report submitted to the EPA shall include a copy of that reporting period's Monthly Monitoring Reports, signed and certified as required by the regulations at 40 C.F.R. § 122.22.

39. All submissions by the City to the EPA pursuant to the requirements of this Order on Consent shall contain the following certification signed by an authorized official:

I 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. Each submittal to the EPA required by this Order on Consent shall be sent via certified mail or overnight delivery, unless otherwise agreed to in writing by the EPA, and addressed to:

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

41. A copy of each submittal required by this Order on Consent shall be delivered to the MDNR and addressed to:

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

VII. General Provisions

Reservation of Rights

42. Compliance with the terms of this Order on Consent shall not relieve Respondent of liability for, or preclude EPA from initiating, an enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, as authorized by Section 309 of the CWA, 33 U.S.C. § 1319. Section 309(g)(6) of the CWA, 33 U.S.C. § 1319(g)(6), addresses the effect of this Order on Consent on subsequent actions by the EPA or the State and with respect to citizen suits.

43. Respondent shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and Federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order on Consent.

44. 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, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.

45. Issuance of this Section 309(a) Order on Consent and Section 308 Information Demand 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 set forth in the Findings.

46. Subject to the limitations of Paragraphs 4 and 31, above, Respondent reserves the right to contest liability in any subsequent action filed by the EPA to seek penalties for violation of this Order on Consent, and reserves the right to contest liability in any subsequent action by the EPA for any violations alleged in the Findings, above.

47. Failure to comply with the terms of this Section 309(a)(3) Order may result in liability for statutory civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the Order.

48. Failure to respond fully and truthfully to the Section 308 Information Demand may result in liability for an administrative or judicial action by the EPA to compel the City's response and/or seek civil penalties under Section 309 of the CWA, as modified by 40 C.F.R. Part 19. In addition, any person who knowingly submits false information may be subject to criminal prosecution under 18 U.S.C. § 1001.

Access and Requests for Information

49. Nothing in this Order on Consent 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. This Order on Consent has no effect on Respondent's right to seek information under applicable federal, state or local law.

Severability

50. 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. Section numbers and headings are for the convenience of the reader and are not substantive provisions of this Order on Consent.

Modification

51. The EPA may, at its sole discretion, grant extensions of the compliance schedule/deadlines required by this Order on Consent by written notice to Respondent, without further formal amendment to the Order on Consent. The EPA's decision to grant an extension will not be unreasonably withheld. All other significant modifications to this Order on Consent may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Effective Date

52. This Order on Consent 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 on Consent.

Termination

53. This Order on Consent shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. The City may petition the EPA to terminate this Order on Consent upon correction of the deficiencies identified by this Order on Consent and demonstrated compliance with the terms of its NPDES permit. The EPA's decision to terminate this Order on Consent will not be unreasonably withheld.

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 Docket 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 on Consent by first class certified mail, return receipt requested, to:

Honorable Andrew Teschendorf
City of Moscow Mills
P.O. Box 218
Moscow Mills, Missouri 63362,

and by first class mail to:

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

11-09-13
Date

John D. Bayle

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Appendix A

<u>Deadline</u>	<u>Compliance Implementation Plan</u>
Effective Date of AOC	GBA Wastewater System Mapping
Effective Date of AOC	GBA Wastewater System Evaluation & Report
Effective Date of AOC	Sequencing of blowers and aeration train
Effective Date of AOC	Reduce blower volume at NWTF
Effective Date of AOC	Reduce blower volume at CCTF
Effective Date of AOC	Install flow meter at NWTF
Effective Date of AOC	Install UV lights at CCTF
Effective Date of AOC	Allowing no more than one septage hauler per hour at CCTF
Effective Date of AOC	Wasting between 440 to 1,030 gallons of sludge per day at CCTF
Effective Date of AOC	Reduction of air volume pumped to the diffusers at NWTF
Effective Date of AOC	Reduction of air volume pumped to the diffusers at CCTF
Effective Date of AOC	Meet w/ Regional Planning Commission regarding funding options for wastewater improvements
12/15/12	Submit draft compliance plan (subject to 2013 budget approval)

12/31/12	Submit final compliance plan w/ 2013 budget approval
First Quarter 2013	Equipment vendor site visits
First Quarter 2013	CDBG grant application and development (recommended by GBA but may not be feasible without design complete)
First Quarter 2013	Seek regulatory approval or waiver for baffle curtain for baffle curtain at CCTF
First Quarter 2013	Discuss with MDNR the appropriate regulatory approvals needed for de-sludging the NWTf settling pond
First Quarter 2013	Adjust and automate clarifiers skimmers at CCTF
First Quarter 2013	Update operational manuals and train staff based on actual flows and vendor recommendations
First Quarter 2013 (or within 30 days of receiving regulatory approval)	Order baffle current for CCTF
Second Quarter 2013 (or within three months of ordering baffle curtain)	Begin installation of baffle curtain at CCTF, including relocation of influent and return lines
Third Quarter 2013 (or within six months of ordering baffle curtain)	Commence operation of baffle curtain at CCTF, including relocation of influent and return lines
Fourth Quarter 2013 (contingent on obtaining regulatory approvals)	De-sludging of settling pond at NWTf
Fourth Quarter 2013 (contingent on obtaining funding)	Repair wet well at city hall lift station and upstream manholes based on engineer's recommendations
Fourth Quarter 2013 (contingent on obtaining funding)	Repair structural cracking at the headworks structure at CCTF
Fourth Quarter 2013	Develop a repair & maintenance plan to address known I&I issues
Second Quarter 2014 (contingent on obtaining funding)	Design for wastewater improvements (close NWTf and pump to CCTF)
Second Quarter 2014 (contingent on obtaining funding)	Complete Sanitary Sewer Evaluation Study to identify I&I issues and recommend remediation steps
Fourth Quarter 2014 (contingent on obtaining funding)	Implement a repair & maintenance plan to address known I&I issues
Fourth Quarter 2014	Apply for funding for wastewater improvements (close NWTf and pump to CCTF)

Fourth Quarter 2014	Seek regulatory approvals for wastewater improvements (close NWTF and pump to CCTF)
Fourth Quarter 2014 (contingent on obtaining funding)	Develop plan to repair additional lift stations based on engineer's recommendations
Fourth Quarter 2015 (contingent on obtaining funding)	Implement, if necessary, plan to repair additional lift stations based on engineer's recommendations
Second Quarter 2016 (contingent on obtaining funding)	Complete survey and property acquisition for wastewater improvements (close NWTF and pump to CCTF)
Fourth Quarter 2017	Begin construction for wastewater improvements (close NWTF and pump to CCTF)
Fourth Quarter 2018	Complete construction for wastewater improvements (close NWTF and pump to CCTF)