

(1) blockages, flow conditions, or malfunctions of a private service connection or other piping/conveyance system that is not owned or operationally controlled by the Respondent; or (2) overland, surface flooding not emanating from the Respondent's Sanitary Sewer System.

b. "Combined Sewer System" shall mean the wastewater collection and transmission system owned or operated by Respondent, including all pipes, force mains, gravity sewer lines, pumping stations, manholes, and appurtenances thereto, and designed to collect and convey municipal sewage and municipal stormwater.

c. "Publicly Owned Treatment Works" or "POTW" shall mean a publicly owned treatment works or POTW as defined in 40 C.F.R. § 403.3(o).

d. "Sanitary Sewer Overflow" and "SSO" shall mean an overflow, spill, diversion, or release of wastewater from the Respondent's Collection System. This term shall include discharges to waters of the State or United States from the Respondent's Sanitary Sewer System, as well as any release of wastewater from the Respondent's Sanitary Sewer System to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups.

e. "Sanitary Sewer System" shall mean the wastewater collection and transmission system owned or operated by Respondent, including all pipes, force mains, gravity sewer lines, pumping stations, manholes, and appurtenances thereto, and designed to collect and convey municipal sewage (domestic, commercial and industrial) separate from municipal stormwater.

III. 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, 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 agency within the state of Missouri that has been authorized to administer the federal NPDES program pursuant

to Section 402 of the CWA and its implementing regulations. EPA maintains concurrent enforcement authority with approved state NPDES programs for violations of NPDES permits.

IV. Findings of Fact

9. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. Respondent owns and operates a POTW that treats domestic and industrial wastewater.

11. Respondent's POTW discharges into the Missouri River, which is a navigable water of the United States, as defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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

14. On June 19, 2009, MDNR issued to the Respondent NPDES Permit MO-0023043 (hereafter "NPDES permit") for discharges from its POTW to Missouri River. The NPDES permit expires June 18, 2014.

15. Respondent's NPDES permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the 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.

16. Between November 9-16, 2009, an EPA representative performed an inspection of Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). EPA provided the report documenting the findings of the inspection to MDNR and St. Joseph on or about February 11, 2010.

17. On May 23, 2011, a Request for Information pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, was issued to St. Joseph. On or about June 6, 2011, St. Joseph provided its response to the Request for Information.

18. The inspection and Request for Information described in Paragraphs 16 and 17 above, identified violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), including numerous instances of SSOs and a failure to develop and implement a preventative maintenance management program.

V. Findings of Violation

19. Based on the EPA inspection and Request for Information referenced in Paragraphs 16, 17, and 18 above, at least 160 SSOs occurred from point sources in Respondent's sanitary sewer system on at least 120 days between January 2007 and May 2011. The following table shows the number of unique SSOs that occurred during each calendar quarter of this period. A unique occurrence consists of a specific SSO location on a specific day. Two or more unique occurrences of SSOs occurred on at least 22 days.

Calendar Quarter	Number of SSOs	Calendar Quarter	Number of SSOs
January-March 2007	6	April-June 2009	6
April-June 2007	18	July-September 2009	4
July-September 2007	8	October-December 2009	16
October-December 2007	14	January-March 2010	8
January-March 2008	16	April-June 2010	6
April-June 2008	15	July-September 2010	11
July-September 2008	5	October-December 2010	2
October-December 2008	7	January-March 2011	5
January-March 2009	10	April-June 2011	3

Unpermitted Discharges from Sanitary Sewer System

20. On at least 17 of the occasions of SSOs referenced in Paragraph 19 above, unpermitted discharges from point sources occurred that were not identified as authorized outfalls in Respondent's NPDES permit.

21. Each day that an unauthorized discharge occurred from Respondent's sanitary sewer system constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Proper Operation and Maintenance

22. Standard Conditions, Part I, Section B, Paragraph 3 of Respondent's NPDES permit states that "Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions... Operators or other wastewater treatment facilities, water containment sources or point sources shall, upon request by the Department,

demonstrate that wastewater treatment equipment and facilities are effectively operated and maintained by competent personnel.” Paragraph 4 of the same section of Standard Conditions requires the permittee to “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 regulations” (hereafter, collectively referred to as the “Proper Operation and Maintenance Condition”).

23. Based on records maintained at MDNR, the EPA inspection, and records submitted by Respondent to EPA pursuant to the information request referenced in Paragraphs 16, 17, and 18, all the SSOs referenced in Paragraph 19 above resulted, in whole or in part, from Respondent’s failure to comply with the Proper Operation and Maintenance Condition referenced in Paragraph 22. Causes of these SSOs included, but were not limited to, defects, blockages, or poor performance within Respondent’s sanitary sewer system.

24. Each day that Respondent failed to comply with the Proper Operation and Maintenance Condition of its NPDES permit constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

Maintenance and Repair Program

25. Special Conditions, Part D, Paragraph 9 of Respondent’s NPDES permit states that “The permittee shall develop and implement a program for maintenance and repair of the collection system. The permittee shall submit a report semi-annually in April and October with the Discharge and Monitoring reports which addresses the progress being made to implement the permittee’s program similar to the above mentioned CMOM.”

26. The EPA inspection and Request for Information referenced in Paragraphs 16, 17, and 18 above, reveal that Respondent has submitted the required semi-annual reports but has not developed a maintenance and repair program to ensure proper operation, maintenance, repair, and capacity of the collection system.

27. Respondent’s failure to develop and implement the required maintenance and repair program is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

VI. Order for Compliance

28. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Complainant hereby orders Respondent to take the actions described in Paragraphs 29 through 32.

Capacity, Management, Operation, and Maintenance

29. Within 30 days of the issuance of this Order, the Respondent shall complete, and submit to EPA for review, the CMOM Program Self Assessment Checklist to evaluate the

strengths of any CMOM components already in place and to aid Respondent in establishing priorities for a comprehensive CMOM program.

30. Within 180 days of the Effective Date, Respondent shall submit to EPA and MDNR for review a comprehensive CMOM program plan with the goal to eliminate all SSOs, including building and private property backups. The CMOM program shall include, at a minimum, the following elements:

- a. Maintaining and updating an inventory of all components in Respondent's sanitary sewer system, including but not limited to sewer lines, access points (e.g. manholes), and service connections, with location information;
- b. A sanitary sewer system inspection and maintenance schedule that provides for a recurring cycle of review of all system components (sewer lines, access points, pump stations, etc.) and equipment, with responsive maintenance, within a specified period of time;
- c. A plan for investigating and identifying the cause of SSOs, including SSOs discovered by the Respondent and via notification from citizens, such that:
 - i. If the SSOs are associated with wet weather events, the city of St. Joseph identifies the source(s) of inflow and/or infiltration contributing to such SSOs; or
 - ii. If the SSOs occur during dry weather, the city of St. Joseph identifies the cause and documents whether the responsibility for corrective action belongs to Respondent or to a private property owner (e.g. if the blockage or defect is located up-gradient of a private service connection);
- d. A management information system for tracking SSOs, citizen complaints, and maintenance activities on the sanitary sewer system. Information in this system shall clearly indicate that it pertains to the sanitary sewer system, when applicable, as distinct from any information pertaining to the combined sewer system;
- e. Ongoing prioritization of areas of the sanitary sewer system that need to be repaired, rehabilitated, or otherwise addressed via short term and long term solutions, based in part on consideration of the frequency of SSOs and problems identified in specific areas of the sanitary sewer system.
- f. A capacity analysis plan to assure that the pump stations and force mains in the sanitary sewer system have adequate capacity to convey wastewater through and from the collection system and to the treatment plant without excessive SSOs.

- i. The capacity analysis plan shall specifically account for the performance of the Easton Road and Faraon Street pump stations.
 - ii. Respondent shall ensure that the objectives of Paragraph 30 are achieved without compromising the performance of the combined sewer system or causing additional CSOs.
- g. Specific budgeting goals and identification of funding sources to conduct the work contained in the CMOM program;
- h. A provision for annual self-assessment with respect to achieving the objectives of all CMOM program elements; and
- i. A schedule for implementing all components of the CMOM program.

31. Upon receipt and review of the CMOM program plan submitted pursuant to Paragraph 30, EPA will accept the plan or notify Respondent of any required revisions. Respondent will incorporate any revisions to the plan within 30 days of receiving revisions from EPA and accordingly implement the CMOM program plan. Otherwise, upon acceptance of the plan by EPA, the City shall immediately implement the CMOM program plan.

Tracking and Reporting

32. Beginning on the Effective Date of the Order, and continuing until termination of the Order, Respondent shall track the following information and submit in writing to EPA and MDNR an annual report by October 1 that contains the following information:

- a. A summary of activities conducted pursuant to each element of the CMOM program described in Paragraph 30.a. through 30.i.
 - i. For Paragraph 30.d., the report shall include the number of all documented SSOs (including but not limited to private property back-ups and SSOs ascertained via complaint) during the previous year, the subset of SSOs that reached a waterbody, and the subset of SSOs for which the responsibility for corrective action belongs to Respondent versus a private property owner.
- b. A description of CMOM activities projected for completion during the next twelve-month period and a projected budget for funding those activities.

Submissions

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

Michael Boeglin
Water Enforcement Branch
U.S. Environmental Protection Agency-Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

34. All documents required to be submitted to MDNR by this Order shall be submitted by mail to:

Kevin Mohammadi
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

and

Dorothy Franklin
Director, Kansas City Regional Office
Missouri Department of Natural Resources
500 Northeast Colburn Rd.
Lee's Summit, Missouri 64086.

Certification

35. All submissions made by Respondent to EPA and MDNR pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

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 submissions of false information.

VII. General Provisions

Effect of Compliance with the Terms of this Order

36. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local,

state, and/or federal permits. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

37. 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 Section 309 of the CWA, 33 U.S.C. § 1319, 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

38. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent 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

39. 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.

Parties Bound

40. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

Effective Date

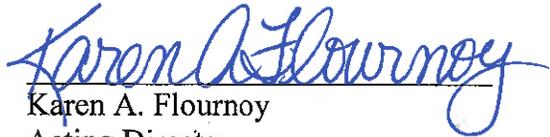
41. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

Termination

42. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 5th day of October, 2011.



Karen A. Flourney
Acting Director
Water, Wetlands and Pesticides Division



Melissa A.C. Bagley
Assistant Regional 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/Order for Compliance 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 Findings of Violation/Order for Compliance by first class certified mail, return receipt requested, to:

Honorable Bill Falkner
Mayor
City Hall
1100 Frederick Avenue
St. Joseph, Missouri 64504.

OCT 14 2011

Date

A handwritten signature in blue ink, appearing to read "Kimberly", is written over a horizontal line.