

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11 OCT -5 PM 10:15

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
The City of Cuba, Missouri,) Docket No. CWA-07-2011-0116
)
) Respondent.) FINDINGS OF VIOLATION
) AND ORDER FOR COMPLIANCE
)
Proceedings under Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))

)

I. Statutory Authority

1. The following FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3), which authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, Region 7.

2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 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. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works ("POTW").

3. The Missouri Department of Natural Resources ("MDNR") is the state agency within the State of Missouri that has been authorized by EPA to administer the federal NPDES and Pretreatment programs pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and applicable implementing regulations, including 40 C.F.R. Part 403. As such, the MDNR is the Approval Authority for the Pretreatment Program in Missouri.

4. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

II. General Factual and Legal Allegations

5. The City of Cuba, Missouri (hereafter "City" or "Respondent"), is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all times relevant, Respondent was, and still is, the owner and/or operator of a POTW in Crawford County, Mo., that includes a wastewater treatment plant ("WWTP") and sewage collection system, which receive wastewater from various domestic and non-domestic sources. As defined by 40 C.F.R. § 403.3(q), a POTW includes but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

7. The POTW discharges to Pleasant Valley Creek.

8. The City's POTW is a "point source" that "discharges pollutants" to "navigable water" of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq.

10. On or about August 25, 2006, MDNR issued NPDES Permit No. MO0094919 ("Permit") to Respondent pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, which required the City to, among other things, develop and submit for approval a Pretreatment Program.

11. Respondent's Pretreatment Program was approved by MDNR on or about February 13, 2008. Thereafter, on or about December 18, 2009, MDNR revised the Permit to include requirements related to the approval of the City's Pretreatment Program and reissued it to Respondent.

12. Section D of the revised Permit, Special Conditions, at paragraph 8, requires the City to implement and enforce its approved Pretreatment Program in accordance with the requirements of the General Pretreatment Regulations, 40 C.F.R. Part 403.8, and Missouri Clean Water Commission regulations at 10 C.S.R. 20-6.100(7).

13. Respondent's approved Pretreatment Program includes, but is not limited to, a description of the Pretreatment Program dated 2002, an Enforcement Response Plan ("ERP") dated 2002, and legal authority to administer the program adopted as city of Cuba General Ordinance No. 834 in 2009 ("Ordinance").

14. The City's approved Pretreatment Program identifies program elements and procedures for regulating industrial users ("IUs") that discharge to Respondent's POTW, as required by 40 C.F.R. Part 403, including:

- a. Procedures to implement the Pretreatment program (40 C.F.R. § 403.8(f)(2)):
 - i. Ordinance Section 3.1 requires IUs to achieve compliance with all categorical pretreatment standards and local limits;
 - ii. Ordinance Section 3.3 and 40 C.F.R. § 403.8(f)(2)(vi) require the City to, at least every two years, evaluate whether each significant industrial user ("SIU") needs an accidental discharge or slug control plan;
 - iii. Ordinance Section 6.4 and 40 C.F.R. § 403.12(e) and (h) require SIUs to sample their discharge at least twice each year (June and December) to determine compliance with pretreatment limitations and submit a signed and certified report with the results of such sampling; and
 - iv. Ordinance Section 9 and 40 C.F.R. § 403.8(f)(2)(viii) identify criteria for the City to use when determining whether violations by IUs represent significant noncompliance.

- b. Requirements to develop and implement an ERP (40 C.F.R. § 403.8(f)(2) and (f)(5)):
 - i. Sections 6.3 and 6.4 of the City's Pretreatment Program, the ERP and 40 C.F.R. §§ 403.8(f)(2)(vii) and 403.8(f)(5)(i) require the City review reports from IUs for timeliness, completeness and accuracy, and to investigate and document violations;
 - ii. the ERP and 40 C.F.R. § 403.8(f)(5)(ii) require the City to address violations by taking timely and, as appropriate, escalating enforcement actions, as identified in Ordinance Section 10 and the Enforcement Response Guide chapter of the ERP; and
 - iii. Section 6.5 of the City's Pretreatment Program, Ordinance Section 9, the ERP and 40 C.F.R. § 403.8(f)(2)(viii) require the City to identify and provide at least annual public notice of any of its SIUs that are in significant noncompliance ("SNC").

15. On or about January 10-12, 2011, EPA performed a Pretreatment Program Audit ("Audit") of the City's Pretreatment Program implementation activities pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). A copy of the Audit report was sent to MDNR and the City on or around March 14, 2011.

16. During the Audit, EPA auditor interviewed City Pretreatment personnel, reviewed documents, including the City's Ordinance, ERP and records maintained by the City regarding its implementation of the Pretreatment Program. The EPA auditor also performed a visual inspection of the City's wastewater treatment plant and several IU facilities.

III. Findings of Violation

17. The facts stated in Paragraphs 5 through 16 above, are hereby incorporated by reference.

18. Based on information and data collected during the Audit and other relevant information, EPA determined that the Respondent failed to implement its approved Pretreatment Program and the General Pretreatment Regulations of 40 C.F.R. Part 403, as follows:

- a. Respondent failed, in violation of Ordinance Section 3.3 and 40 C.F.R. § 403.8(f)(2)(vi), to evaluate whether each SIU needs an accidental discharge or slug control plan.
- b. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(vii), to identify and investigate instances of noncompliance by IUs, including the following violations by IUs:
 - i. in calendar year 2010, none of the SIUs submitted the certification statement required by 40 C.F.R. 403.12(l) with their periodic reports on continued compliance submitted pursuant to 40 C.F.R. 403.12(e);
 - ii. Prairie Valley Landfill failed to submit the self monitoring results for temperature in its periodic reports due in the first and third quarters of 2010, and for pH in its periodic reports the first and third quarters of 2009 and the third quarter of 2010;
 - iii. BIPACOO failed to submit the self monitoring results for pH and temperature in its periodic reports due in the first and third quarters of 2010; and
 - iv. USONA failed to submit the self monitoring results for pH and temperature in its periodic reports due in the first and third quarters of 2010.
- c. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(5), to implement its ERP by failing to take any enforcement action to address violations by IUs that exceeded their Pretreatment discharge limitations, including:
 - i. Georgia Pacific violated its limit for oil and grease in its third quarter 2010 report;
 - ii. Blue Beacon violated its cadmium and zinc limits in the fourth quarter of 2010; and
 - iii. USONA violated its lead and nickel limits in the third quarter of 2010, and its pH limit in the second quarter of 2010.
- d. Respondent failed, in violation of 40 C.F.R § 403.8(f)(viii), to identify and provide public notice in 2010 of its SIUs that were in SNC, including but not limited to those IUs that had chronic violations for one or more

pollutant parameter in a six month reporting period and those IUs that failed to provide required reports within 30 days after the due date.

19. Respondent's violations identified in Paragraph 18 above are violations of the requirement of NPDES Permit No. MO0094919 to implement its Approved Pretreatment Program, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d), and regulations promulgated thereunder at 40 C.F.R. Part 403.

IV. Order for Compliance

20. Based on the foregoing FINDINGS and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

21. Immediately upon receipt of this Order, Respondent shall implement its Enforcement Response Plan, as approved by MDNR as part of its Pretreatment Program February 13, 2008. Respondent's actions to implement the Enforcement Response Plan shall include, but not be limited to the following:

- a. SIU Certifications – Respondent shall:
 - i. notify each SIU of the requirement to submit the certification statement required by 40 C.F.R. 403.12(l);
 - ii. if applicable, notify each SIUs of the requirement to submit a TTO certification statement required by 40 C.F.R. 433.12(a) or 40 C.F.R. 413.03(a); and
 - iii. ensure that all future periodic compliance reports submitted by its SIUs contain the appropriate certifications statements.

- b. SIU Inspections – Respondent shall:
 - i. properly inspect and document the inspection of each of its SIUs;
 - ii. include in the next inspection of each SIU a determination of whether the SIU needs a slug control plan;
 - iii. where Respondent determines a SIU needs a slug control plan, Respondent shall require the SIU to expeditiously prepare a plan that includes the requirements found at 40 C.F.R. § 403.8(f)(2)(vi)(A) through (D); and
 - iv. include a copy of each completed inspection checklist and/or report generated during the SIU inspections, including the determination of whether a slug control plan is warranted, in the quarterly report required by Paragraph 23, below.

- c. Significant Noncompliance Determinations – Respondent shall:
 - i. twice each year, following the collection of all sampling events and reporting requirements between July 1, 2011, and December 31, 2011, and between January 1, 2012, and

- June 30, 2012, make a compliance status determination for each SIU using the “significant noncompliance” criteria identified in 40 C.F.R § 403.8(f)(vii)(A) through (G); and
- ii. report the compliance status of each SIU in the quarterly report required pursuant to Paragraph 23, below.
- d. **Enforcement** – Respondent shall implement the provisions of its ERP to:
- i. investigate instances of noncompliance by its SIUs and initiate appropriate enforcement responses, as directed by its Pretreatment Program, Ordinance and the Enforcement Response Guide of its ERP; and
 - ii. report all noncompliance determinations and responses taken pursuant to the ERP in the quarterly report pursuant to Paragraph 23, below.

22. If Respondent elects to modify its Enforcement Response Plan, in accordance with procedures found in 40 C.F.R. Part 403 during the duration of this Order, a copy shall be sent to EPA at the same time it is sent to MDNR for approval.

Reporting

23. Beginning January 28, 2012, Respondent shall submit to EPA on a quarterly basis (January 28, April 28, July 28 and October 28) until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 33, below, the following information regarding its Pretreatment enforcement activities during each reporting quarter:

- a. copies of any periodic compliance reports submitted by SIUs;
- b. a description of any enforcement taken by Respondent pursuant to the terms of its ERP; and
- c. a copy of the inspection report, checklist and slug control plan determination for each inspection of an SIU Respondent has conducted during the quarter, or a statement that Respondent has conducted no SIU inspections.

Certification

24. All submissions made by Respondent to the EPA 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.

Submittals

25. All documents required for submittal to EPA shall be sent by certified mail, return receipt requested, to the following:

Mr. Paul Marshall, Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

26. A copy of each submittal to EPA shall be delivered to MDNR, as follows:

Walter Fett, Environmental Engineer
NPDES Permits & Engineering Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

V. General Provisions

Effect of Compliance with the Terms of This Order for Compliance

27. Compliance with the terms of this Order 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, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

28. 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.

29. 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 Act, 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 Act for any violation whatsoever.

Access and Requests for Information

30. 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

31. 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.

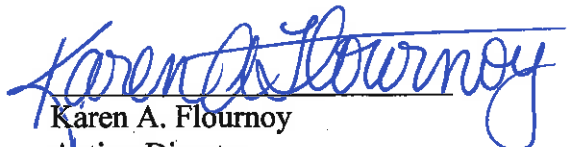
Effective Date

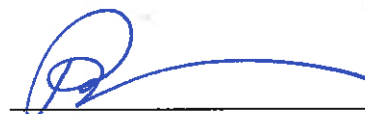
32. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

33. 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.

Issued this 5th day of October, 2011.


Karen A. Flournoy
Acting 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 Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North 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 Ray Mortimeyer
Mayor, city of Cuba, Missouri
202 North Smith Street
Cuba, Missouri 65453.

I further certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

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

Gary Gaines
Missouri Department of Natural Resources
Southeast Regional Office
2155 N. Westwood Blvd.
Poplar Bluff, Missouri 63901.

10/6/11

Date

Carla A. Moreno