

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
ST. JOSEPH, MISSOURI)

) FINDINGS OF VIOLATION AND
) ORDER ON CONSENT FOR
) COMPLIANCE

Respondent)

) Docket No. CWA-07-2013-0039

Proceeding under Sections 308 and)
309(a) of the Clean Water Act,)
33 U.S.C. §§1318 and 1319(a))

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UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), by Sections 308 and 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318 and 1319(a), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent, the city of St. Joseph, Missouri (“Respondent” or “St. Joseph”), owns and operates a publicly owned treatment works (“POTW”) in the state of Missouri that treats domestic and industrial waste. The POTW includes a wastewater treatment facility and the system of sewers, pipes, and other conveyances that collect and convey sanitary sewage and industrial wastewater to the treatment facility serving the city of St. Joseph, Missouri.

II. Intent of Parties

3. The Director, Water, Wetlands and Pesticides Division, EPA, Region 7, on behalf of the Administrator of the EPA, together with Respondent enter into this Section 309(a)(3) Order in order to achieve compliance with the CWA, 33 U.S.C. § 1251 *et seq.*

4. EPA and Respondent (“collectively referred to herein as the “Parties”) have negotiated in good faith and have reached a settlement of the issues in this Order.

5. Respondent neither admits nor denies the factual allegations contained in the Findings of Violation and Order.

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6. The Parties agree that settlement of the claims alleged in the Findings of Violation and Order, consisting of the unauthorized discharges occurring between May 2008 through the present, as described in Section IV, EPA Findings, is fair, reasonable, and in the public interest and entry of this Order is the most appropriate way of resolving the claims alleged herein.

7. Respondent has made and continues to make good faith and diligent efforts toward the goal of eliminating sanitary sewer overflows ("SSOs").

III. Statutory and Regulatory Framework

8. 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.

9. 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.

10. 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.

11. 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. EPA Findings

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

13. Respondent owns and operates a POTW, as defined in 40 C.F.R. § 403.3(o), which treats domestic and industrial wastewater.

14. 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.

15. 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.

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

17. 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.

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

19. Respondent has discharged untreated wastewater on a minimum of 16 occasions, each of which constitutes a discharge of pollutants, to One Hundred and Two River, Candy Creek, Platte River and their tributaries from May 2008 continuing through the present.

20. One Hundred and Two River, Candy Creek, Platte River and their tributaries are "navigable waters" and "waters of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation, 40 C.F.R. § 122.2.

21. Respondent is without authorization to discharge pollutants from its POTW to One Hundred and Two River, Candy Creek, Platte River and their tributaries without a NPDES permit.

22. EPA finds that Respondent has failed to control its pollutants in order to prevent the unauthorized discharges of pollutants into One Hundred and Two River, Candy Creek, Platte River and their tributaries, and that therefore Respondent is in noncompliance with the Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

23. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), having taken into account the seriousness of the violations and good faith efforts of Respondent to comply with Section 301, EPA finds that by no later than June 18, 2015, is a reasonable time for Respondent to comply with the requirement of Section 301(a) of the CWA to address the unauthorized discharge of pollutants to waters of the United States, as described in Paragraph 24, below. Respondent agrees to develop and implement a program for maintenance and repair of its separate sanitary sewer system in order to locate and eliminate sources of excessive infiltration and inflow into its separate sanitary sewer system. Additionally, Respondent agrees to use best efforts to operate and maintain its separate sanitary sewer system to comply with the CWA and its NPDES permit.

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V. Order for Compliance On Consent

24. Based on the EPA Findings set forth above, and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), IT IS HEREBY ORDERED AND AGREED TO:

Respondent agrees to take all measures necessary to achieve the goal of eliminating the unauthorized discharges of untreated wastewater from its separate sanitary sewer system to waters of the United States by no later June 18, 2015.

Respondent agrees to submit reports in writing as set forth in Paragraph 34 below and consistent with D. Special Conditions, Paragraph 8 of its NPDES permit, that provide a comprehensive description of Respondent's efforts to return to compliance with Section 301(a) of the CWA, including the following: a) measures taken to locate and eliminate sources of excessive infiltration and inflow into the separate sanitary sewer collection system; b) activities conducted pursuant to the program for maintenance and repair in order to prevent unauthorized discharges that are the result of operation and maintenance deficiencies; and c) copies of any notices of non-compliance submitted to MDNR consistent with Respondent's NPDES permit during the duration of this Order, including but not limited to notices of unauthorized discharges (i.e. SSOs). Reports shall be provided annually in January and cover the previous calendar year.

VII. General Provisions

25. 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.

26. 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, including but not limited to, those violations set forth in EPA Findings.

27. 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.

28. 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.

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29. 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.

30. Respondent acknowledges the jurisdiction of EPA to issue this Order.

31. Respondent 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, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

32. Failure to comply with the terms of the Section 309(a)(3) Compliance Order may result in your liability for statutory civil penalties under Section 309(d) of the Act, 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 Compliance Order, a United States District Court may impose civil penalties if the court determines that you have violated the Act and failed to comply with the terms of the Order.

33. Respondent reserves the right to contest liability in any subsequent action filed by EPA to seek penalties for violation of this Order for Compliance on Consent and reserves the right to contest liability in any subsequent action filed by EPA for any violations alleged in the EPA Findings, above.

34. Information required to be submitted to EPA shall be mailed to:

Michael Boeglin, or his successor
U.S. EPA, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and a copy shall be sent to

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

35. The terms of this Order shall be effective and enforceable against Respondent upon the date of signatures of the Parties.

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36. Termination. Upon Respondent's satisfaction of the terms of the Order by establishing, and successfully implementing for a period of twelve (12) months, all the operation and maintenance improvements and programs and other requirements in this Order as set forth in Paragraph 24, Respondent shall submit for EPA review and approval a final report ("Final Report") that includes a description of all of the actions which have been taken toward achieving compliance with this Order, an assessment of the effectiveness of such actions in preventing unauthorized discharges, (i.e. SSOs), and an analysis of whether additional actions beyond the scope of this Order are necessary to further eliminate unauthorized discharges. EPA shall use its best efforts to expeditiously review the Final Report. If EPA determines that Respondent has provided a satisfactory Final Report as required above and has satisfied the terms of this Order as set forth above, EPA will provide notice to Respondent, and this Order shall be deemed terminated. If EPA determines that the Final Report is not satisfactory or that Respondent has not satisfied any term of this Order as set forth above, EPA will notify Respondent and provide a list of the deficiencies which may include but not be limited to a requirement that Respondent modify an operation and maintenance program as appropriate in order to correct a deficiency. In this event, Respondent shall correct such deficiencies, implement such corrections, and shall submit a modified Final Report for review and approval in accordance with the EPA notice.

Dated June 24, 2013.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


Karen A. Flourney
Director, Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

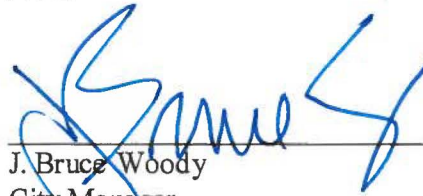

Melissa A.C. Bagley
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FOR THE CITY OF ST. JOSEPH, MISSOURI



J. Bruce Woody
City Manager
City Hall
Room 305
1100 Frederick Avenue
St. Joseph, Missouri 64501

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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 Hearing Clerk, United States Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219.

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

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

Bryan Carter
Assistant City Attorney
City Hall
1100 Frederick Avenue
St. Joseph, Missouri 64504

Shawna Bligh
Chris Wendelbo
BW Law Group, LLC
6320 Brookside Plaza, Suite 182
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Paul Dickerson
Chief, Water Pollution Compliance, and Enforcement Section
Missouri Department of Natural Resources
PO Box 176
Jefferson City, Missouri 65102-0176

7/11/13

Kathy Rovensio

Date