

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF  
GOWER, MISSOURI

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

Respondent

)  
) Docket No. CWA-07-2009-0105  
)

Proceeding under Section 309(a)(3)  
Of the Clean Water Act,  
33 U.S.C. §1319(a)(3)  
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)  
)

**I. Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and ORDER (“Order”) 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” or the “Act”), 33 U.S.C. § 1319(a)(3), 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 is the City of Gower, Missouri which owns and operates a publicly owned treatment works (“POTW”). The POTW includes a wastewater treatment facility which serves the city of Gower, Missouri.

**II. Statutory and Regulatory Framework**

3. 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 establishes the National Pollutant Discharge Elimination System (“NPDES”) and a permitting scheme authorizing discharge of pollutants notwithstanding the prohibition of Section 301.

4. 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.

5. 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.

6. The Missouri Department of Natural Resources (“MDNR”) is the agency within the state of Missouri that has been authorized to administer the federal National Pollutant Discharge Elimination System (“NPDES”) program pursuant to Section 402 of the CWA and its implementing regulations. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

### **III. Findings of Fact**

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

8. Respondent owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.

9. 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.

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

11. On November 15, 2002, MDNR issued to the Respondent NPDES Permit No. MO-0099287 (hereafter “NPDES permit”) for discharges from its POTW to Jenkins Branch, a tributary of Castile Creek. The NPDES Permit expired November 14, 2007. MDNR administratively extended the effect of the 2002 NPDES permit until a new permit was issued. MDNR issued Respondent a new NPDES Permit, which became effective on May 29, 2009 and expires on May 28, 2014. Respondent’s NPDES Permit establishes effluent limitations for Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS) and pH. Respondent’s NPDES permit also requires an 85% removal efficiency for TSS and BOD.

12. Between March 23-26, 2009, an EPA representative performed an inspection of Respondent’s wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the Inspection was observation of the City’s POTW.

### **IV. Findings of Violation**

13. The facts stated in Paragraphs 7 through 12 above are herein incorporated.

### **Effluent Limit Violations**

14. Section A of Respondent’s NPDES permit establishes effluent limitations for BOD for Outfall 001. The NPDES permit sets a monthly average limitation for BOD of 30 milligrams per liter (mg/l). The NPDES permit sets a weekly average limitation for BOD of 45 mg/l.

15. Within the past five years, the City has exceeded its weekly average and monthly average NPDES permit limitations for BOD, including the following:

- a. the City exceeded the monthly average NPDES permit limitation for BOD in October 2006 and February 2008, when the measured values were 40 mg/l and 58.65 mg/l, respectively; and
- b. the City exceeded the weekly average NPDES permit limitation for BOD in February 2008, when the measured value was 58.65 mg/l.

16. Section A of Respondent's NPDES permit establishes effluent limitations for TSS for Outfall 001. The NPDES permit sets a monthly average limitation for TSS of 30 milligrams per liter (mg/l). The NPDES permit sets a weekly average limitation for TSS of 45 mg/l.

17. Within the past five years, the City has exceeded its weekly average and monthly average NPDES permit limitations for TSS in April 2008, when the measured value was 120 mg/l.

18. Section A of Respondent's NPDES permit requires 85% removal efficiency for TSS and BOD.

19. Within the past five years, the City has failed to meet its 85% removal efficiency requirement for TSS during the following monitoring periods: October 2007, April 2008, September 2008, and March 23-26, 2009.

20. Respondent's discharges in excess of NPDES permit limitations are violations of the terms and conditions of Respondent's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Failure to Comply with Sampling, Recording, and Record Keeping Requirements**

21. Part I, Section A(4) of the Standard Conditions of Respondent's NPDES permit state that all test procedures for the analysis of a pollutant shall be in accordance with Missouri regulations set forth at 10 CSR 20-7015.

22. The EPA Inspection referenced in Paragraph 12 above, revealed that standard test methods for analyzation of BOD and TSS, including quality control checks, did not meet the requirements of Respondent's NPDES permit and 10 CSR 20-7.015.

23. The EPA Inspection referenced in Paragraph 12 above, revealed that Respondent did not measure pH using the proper method of sampling, grab samples, within 15 minutes of collection, in violation of the requirements of Respondent's NPDES permit.

24. Part I, Section A(5) of the Standard Conditions of Respondent's NPDES permit establishes recording requirements for all samples taken pursuant to the requirements of

Respondent's NPDES permit, including method of sampling, date, exact place, time, and analytical technique of sampling.

25. The EPA Inspection referenced in Paragraph 12 above, revealed that Respondent did not document the method of sampling or measurement, time of sampling, and analytical technique of sampling in Respondent's reports.

26. Part I Section A(7) of the Standard Conditions of Respondent's NPDES permit establishes record retention requirements for monitoring information, including all calibration and maintenance records.

27. The EPA Inspection referenced in Paragraph 12 above, revealed that Respondent did not retain records on monitoring information and calibration logs used to report TSS and pH data from April 2006 through December 2007.

28. Respondent's failures to comply with proper sampling, recording and record keeping procedures are violations of the terms and conditions of Respondent's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Failure to Comply with Sludge and Biosolids Record Keeping, Reporting  
and Sampling Requirements**

29. Part III Section K(1) of the Standard Conditions of Respondent's NPDES permit states that Respondent shall maintain sludge and biosolids records on file at the facility for at least five years for items listed in the Standard Conditions and any additional items in the Special Conditions of the permit.

30. The EPA Inspection referenced in Paragraph 12 above, revealed that Respondent did not maintain sludge and biosolids records for the following monitoring periods:

- a. for calendar year 2006, Respondent did not maintain land application records;
- b. for calendar year 2005, Respondent did not maintain land application records or laboratory records for biosolids; and
- c. for calendar year 2004, Respondent did not maintain sludge and biosolids monitoring records, which was within the 5-year retention period at the time of the EPA Inspection.

31. Part III Section K(5)(g)(1) of the Standard Conditions of Respondent's NPDES permit states that Respondent shall report in Respondent's sludge/biosolids annual report the location of each sludge/biosolids land application site, including the legal description, and the annual and cumulative dry tons/acre application rate.

32. The EPA Inspection referenced in Paragraph 12 above, revealed that Respondent did not report the legal description of Respondent's sludge/biosolids land application site within its annual report.

33. The EPA Inspection referenced in Paragraph 12 above, revealed that Respondent did not report the dry tons/acre land application rate of biosolids within its annual report.

34. Part III Section H(6) of the Standard Conditions of Respondent's NPDES permit states that Respondent is subject to the Water Quality Guides number WQ 422 through 426 published by the University of Missouri, and thereby incorporates these Water Quality Guides into the requirements of Respondent's NPDES Permit. These requirements include, among others, that Respondent shall collect at least seven grab samples across sludge digesters for testing.

35. The EPA Inspection referenced in Paragraph 12 above, revealed that Respondent collected only 3-4 grab samples for each sludge test.

36. Respondent's failures to comply with sludge and biosolids record keeping, reporting, and sampling requirements are violations of the terms and conditions of Respondent's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **V. Order For Compliance**

37. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Sections 308 and 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below in Paragraphs 38 through 41 of this Order.

38. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is 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.

39. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

40. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within those thirty (30) days, submit to EPA and MDNR for review a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

41. For the first three full calendar months following the effective date of this Order, Respondent shall submit to EPA a copy of the following: all laboratory records, including sample results from internal and any external laboratories that analyze samples for Respondent; calibration logs; bench sheets; monitoring records; chain-of-custody forms that are created or updated during the period; and any Standard Operation Procedure used by Respondent's internal laboratory. Respondent shall submit the copies to EPA at the end of the three-month period.

#### **Acceptance of Submissions and Incorporation into the Order**

42. Upon receipt, EPA will review all documents submitted by Respondent pursuant to Paragraph 38 through 41, and accept such submittals or require modification and resubmittal of a portion or all of the documents pursuant to Paragraph 43, below. Upon acceptance, documents submitted under Paragraph 38 through 41, above, or resubmitted pursuant to Paragraph 43, below, shall be deemed incorporated into and become enforceable under this Order.

#### **Modification and Resubmission of Documents**

43. If required by EPA pursuant to Paragraph 42, above, Respondent shall, within fifteen (15) days of receipt of any written comments from EPA regarding the documents submitted by Respondent pursuant to this Order, make modifications and changes to such documents as directed by EPA, and resubmit the documents to EPA. The parties may agree, in writing, to a longer period of time for resubmission of such documents.

#### **Submissions**

44. 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.

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

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

### **Certification**

46. 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.

### **VI. General Provisions**

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

47. 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.

48. 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**

49. 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**

50. 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**

51. 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**

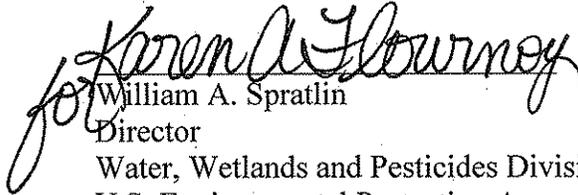
52. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

### **Termination**

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

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Issued this 2nd day of September, 2009.

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

  
Kristen Nazar  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

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, 901 North Fifth Street, Kansas City, Kansas 66101.

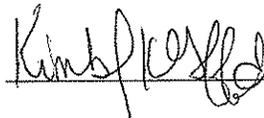
I further certify that on the date noted below I sent a copy of the foregoing Findings of Violation/Order for Compliance by first class certified mail, return receipt requested, to:

Honorable Mayor and City Council  
City Hall  
City of Gower, Missouri  
97 North Fourth Street  
Gower, Missouri 64454;

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

Mr. Karl Fett, Director  
Kansas City Regional Office  
Missouri Department of Natural Resources  
500 NE Bolbern Road  
Lee's Summit, Missouri 64086-4710

16 Sep 09  
Date

  
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