UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF	)	
	)	
	)	
THE CITY OF ROCKAWAY BEACH	)	
MISSOURI	)	FINDINGS OF VIOLATION/
	)	ORDER FOR COMPLIANCE
Respondent	)	
	)	
	)	Docket No. CWA-07-2008-0031
Proceedings under Section 309(a)(3)	)	
of the Clean Water Act,	)	
33 U.S.C. § 1319(a)(3)	)	
	)	

I. PRELIMINARY STATEMENT

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

2. Respondent is the City of Rockaway Beach, Missouri which owns and operates a publicly owned treatment works ("POTW"). The POTW includes a wastewater treatment facility, which serves the cities of Rockaway Beach, Merriam Woods and Bull Creek, 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 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.

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 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, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized states such as Missouri for violations of the CWA.

III. FINDINGS OF FACT

7. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. Respondent owns and operates a publicly owned treatment works ("POTW"), as defined by 40 C.F.R. § 403.3(q), which receives and treats wastewater from various domestic and industrial sources.

9. The POTW is a "point source"as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

10. The POTW causes the "discharge of pollutants" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

11. The POTW discharges pollutants into Lake Taneycomo. Lake Taneycomo is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

13. MDNR granted NPDES Permit No. MO-0108162 ("Permit") to Respondent, effective August, 30, 2006 through August 29, 2011, for discharges from its POTW into Lake Taneycomo.

14. On September 10-13, 2007, EPA performed an inspection of the Rockaway Beach Wastewater Treatment Facility at 1000 Boys Camp Road in Rockaway Beach, Taney County, Missouri, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspection included a visual inspection of all plant unit processes in the POTW and the collection of 24-hour composite samples each day from the wastewater treatment plant effluent.

IV. FINDINGS OF VIOLATION

15. The facts stated in paragraphs 7 through 14 above are herein incorporated.

Count 1 – Failure to Sample

16. Part A, Effluent Limitations and Monitoring Requirements of the Permit, sets limits for Ammonia, Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), pH, Fecal Coliform, Total Phosphorus as P and Oil and Grease. Part A of the Permit also requires monthly sampling and analysis to verify compliance with the effluent limitations.

17. Respondent failed to collect samples and falsified the Discharge Monitoring Reports ("DMRs") to indicate that samples had been collected and analyzed as required by the Permit. This failure to sample is a violation of the Permit and therefore a violation of Section 402 of the CWA.

Count 2 - Improper Sampling Procedures

18. . The Standard Conditions of the Permit, Part 1, Section A.1.a., requires that the samples and measurements required by the Permit are to be representative of the nature and volume of the monitored discharge and are to be taken at the outfall, and unless specified, before the effluent joins or is diluted by any other body of water or substance. In addition, Part A of the Permit requires that 24 hour composite samples be collected for BOD, TSS and Whole Effluent Toxicity ("WET") tests. During the inspection, Respondent stated that it collects grab samples, rather than composite samples. Grab samples are not representative. Such sampling is an improper procedure and is a violation of the Permit.

19. Federal regulations at 40 C.F.R. Part 136.3, set forth the test requirements that must be used to determine total ammonia as N and total phosphorus as P. Both test procedures require digestion as an initial step. Respondent failed to perform this step in the sampling process. Failure to perform this step is improper sampling procedure and a violation of the Permit.

20. Missouri regulations at 10 C.S.R. Part 20, Chapter 9, which are adopted by reference into the Permit, require process test controls to be implemented at a designated frequency. At the time of the inspection, these tests were not being performed for the POTW at the required frequency. Failure to perform these tests in compliance with 10 C.S.R. Part 20, Chapter 9, is a violation of the Permit and therefore a violation of Section 402 of the CWA.

Count 3 – Failure to Retain Records

21. The Standard Conditions of the Permit, Part I, Section A. 7, require that Respondent retain records of all monitoring information, including copies of all calibration and maintenance records and all original strip chart recording for continuous monitoring instrumentation, copies of all reports required by Permit, and records of all data used to complete the application for the Permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. Respondent failed to maintain any of the aforementioned records, in violation of the Permit.

Count 4 – Facilities Operation

22. The Standard Conditions of the Permit, Part I, Section B.3, require Respondent to operate and maintain the POTW to comply with the Missouri Clean Water Law and applicable permit conditions. Respondent violated its Permit and therefore violated Section 402 of the CWA by the following omissions.

(a) Respondent failed to maintain the flow measuring equipment. Specifically,

(i) The inflow and effluent flow monitoring devices had not been calibrated.

(ii) The head detector for the combined Merriam Woods - Bull Creek flow was not mounted at the proper location of the converging section of the Parshall flume.

(ii) The flow meter for Rockaway Beach was not accurately measuring flow.

(b) Respondent failed to maintain the air blower system to provide adequate aeration in the oxidation ditch for effective treatment. At the time of the inspection, the dissolved oxygen measured 1.5 micrograms per liter (mg/l); the appropriate level for effective treatment is no greater that 0.4 mg/l.

(c) Respondent failed to maintain the east aeration tank/clarifier unit in an operable condition, which is necessary if it is to perform its function of serving as a standby unit to the one in service.

(d) Respondent failed to maintain the UV system in a functioning mode. The UV system was not delivering adequate light intensity to the wastewater effluent for effective reduction of fecal coliform.

(e) Respondent failed to protect all the mechanical equipment with drive belt covers.

(f) Respondent failed to maintain the sand filter backwash pumps, causing a bypass as there was a direct discharge of backwash into the channel without passing through the UV light bank.

Count 5 – Failure to Report

23. Special Conditions to the Permit, Section C.8., require Respondent to submit a report semi-annually in April and October with the Discharge Monitoring Reports ("DMRs") which address measures taken to locate and eliminate sources of inflow and infiltration into Respondent's collection system. Respondent failed to submit these reports with the April and October DMRs. This failure is a violation of the Permit.

24. Standard Conditions to the Permit, Part III, Section K.2., require an annual report to be submitted to MDNR by January 28th of each year, reporting sludge handling and application activities of the previous calendar year. Respondent failed to submit the annual sludge report for 2006. This failure is a violation of the Permit.

25. Standard Conditions to the Permit, Part I., Section A.5., require that whenever a bypass occurs, the POTW must report such incident to MDNR within twenty-four hours and submit a written follow-up within five days. During the inspection, EPA observed bypass: backwash (unable to flow through plugged sand filters) flowing directly into the discharge channel without passing through the UV light. Respondent failed to make the oral report and to submit the written report after a bypass occurred. This failure is a violation of the Permit.

Count 6 – Wrongful Sludge Application

26. Standard Conditions to the Permit, Part III, incorporate the federal sludge disposal requirements set forth in 40 C.F.R. Part 503 which establishes pollutant limits, management practices, and operational standards for disposal of sewage sludge to the land. During the inspection, Respondent provided EPA the pathogen analysis it performed in 2003 and 2004 to sludge that Respondent applied to agricultural land. The analyses indicated that the Class B sludge generated by the POTW had a pathogen density of 2,780,000 Most Probable Number/Colony Forming Units (MPN/CFU) in 2003 and 4,060,000 MPN/CFU in 2004. The regulations at 40 C.F.R. § 503.32 (b)(2)(ii) set the pathogen limit applicable to the sludge from the POTW at either 2,000,000 MPN per gram of total solids or 2,000,000 CFUs per gram of total solids. The regulations at 40 C.F.R. § 503.15(a) state that the Class A pathogen requirements in Section 503.32(a) or the Class B pathogen requirements and site restrictions in Section 503.32(b) shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site. The pathogen analyses of the sludge performed in

2003 and 2004 indicated the pathogen limit in 40 C.F.R. § 503.32(b)(2)(ii) was exceeded. Land applying sludge with these exceedances was a violation of the Permit.

Count 7 – Inadequate Outfall Marking

27. Special Conditions to the Permit, Part C.2, require that all outfalls be clearly marked in the field. At the time of the inspection, the marking for outfall 001 was painted on the manhole lid of the last manhole before the outfall enters Lake Taneycomo and not clearly marked. Failure to clearly mark the outfall to alert the public to the nature of the discharge is a violation of the Permit.

Count 8 – Bypass

28. During the inspection, EPA observed that the sand filter backwash pumps had failed, resulting in backwash overflowing directly into the discharge channel without passing through the UV light bank. This is a bypass as defined by Standard Conditions of the Permit, Part 1, Section B(5). Based upon the condition of the sand filters through which flow is intended to pass in the treatment process, EPA determined that bypass was occurring and had occurred. Allowing bypass to occur is a violation of the Permit.

Effect of Violations of the Permit

29. Respondent's violations of the terms and conditions of its Permit, as described in Counts 1 through 8 (Paragraphs 16 through 28 above), are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

V. ORDER FOR COMPLIANCE

30. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 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 31 through 38.

31. Within thirty (30) days of the Effective Date, as defined in Paragraph 41 herein, Respondent shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of its Permit.

32. Within sixty (60) days of the Effective Date, Respondent shall prepare and submit to EPA an Operations and Maintenance (O&M) Manual which addresses preventative maintenance and includes a schedule for maintenance.

33. Within thirty (30) days of the Effective Date, Respondent shall submit to EPA a copy of the 2007 sludge report submitted to MDNR. In addition, Respondent shall provide an accounting of all sludge wasted from the clarifiers in 2007. Thereafter, Respondent shall continue to submit this information annually to EPA through 2012.

34. On the 10th day of the month immediately following the Effective Date and on the 10th day of every 3rd month thereafter through 2012, Respondent shall submit to EPA with a copy to MDNR sampling and analysis information of the influent and effluent, bench sheets, removal efficiency calculations, and letterhead data reports from the certified laboratory performing analyses. Respondent shall submit DMRs to MDNR with a copy to EPA on the same schedule.

35. In April and October of 2008 and continuing in April and October of the next five years, Respondent shall provide EPA a copy of the semi-annual report it submits to MDNR.

36. In the event that Respondent believes complete correction of the violations cited in this Order is not possible within thirty (30) days of the Effective Date, Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken. 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.

37. All documents required to be submitted to EPA by this Order shall be transmitted by mail to:

Ms. Cynthia Sans
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, KS 66101

38. A copy of documents required to be submitted to MDNR by this Order shall be transmitted by mail to:

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

Ms. Cindy Davies, Director
Southwest Regional Office
Missouri Dept. of Natural Resources
2040 W. Woodland
Springfield, MO 65807-5912

VI. GENERAL PROVISIONS

Effect of Compliance with the Terms of this Order for Compliance

39. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial 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.

40. 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. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), 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

41. 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

42. 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

43 The terms of this Order shall be effective and enforceable against Respondent upon the date it is signed by EPA.

Issued this 4th day of February, 2008.

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

Audrey Asher
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
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:

Mr. Lawrence E. Cline, Mayor
City of Rockaway Beach
P. O. Box 315
Rockaway Beach, MO 65740

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

2/5/08
Date

Audrey Asher