

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)

) Docket No. CWA-07-2006-0060

CENTRAL JEFFERSON COUNTY)
UTILITIES, INC.)

) FINDINGS OF VIOLATION and
) ORDER FOR COMPLIANCE

Respondent)

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

Background and Findings of Violation

Jurisdiction

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE are 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).

2. The EPA is alleging that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311 and Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

3. The Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA, Region VII, is the Director of Region VII's Water, Wetlands and Pesticides Division, EPA, Region VII.

4. Respondent, Central Jefferson County Utilities, Inc. (hereinafter referred to as "CJCU") privately owns and operates a Waste Water Treatment Facility ("WWTF") in the State of Missouri, which services homes in the Raintree Plantation Subdivision. The Missouri State Operating Permit is issued to Raintree Plantation and lists the owners as Central Jefferson County Utilities, Inc. Kenneth McClain and Jeremiah Nixon are the sole directors of both companies.

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, the 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 state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

9. Section 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

10. Pursuant to Sections 405(d)(1) of the Act, 33 U.S.C. 1345(d)(1), the EPA promulgated the regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Parts 501 and 503. These regulations include record keeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

11. The State of Missouri has not yet been authorized to administer the Sludge Management Program. The EPA remains responsible for enforcement of the requirements of the Sludge Management Program until such a time as the State is authorized to administer the program in its entirety.

Findings of Fact

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

13. The CJCUC owns and operates a WWTF that receives and treats wastewater from approximately 600 residences inside the Raintree Plantation subdivision located in Jefferson County, Missouri.

14. The CJCUC's WWTF is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

15. The CJCUC's WWTF causes the "discharge of pollutants" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

16. The CJCUC's WWTF generates "sewage sludge" that is used for "land application" on "agricultural land," as those terms are defined by 40 C.F.R. §§ 503.9(w), 503.11(h) and 503.11(a), respectively.

17. The CJCUC's WWTF discharges pollutants into Galligher Creek. Galligher Creek is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

19. MDNR granted NPDES permit, No. MO-0099473 ("NPDES permit"), to the Respondent, effective July 2, 1999, and expired July 1, 2004. Respondent timely submitted an application for the reissuance of the permit to MDNR on January 2, 2004. As of this date, the permit has not been reissued and is administratively extended pending development of a final Schedule of Compliance for upgrades to the wastewater treatment system.

20. On June 6 and 7, 2005, the EPA performed an inspection of the CJCUC wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the inspection was: (1) a facility walk through and inspection of the wastewater treatment facilities; (2) a review of laboratory procedures, facility records and record keeping procedures; and (3) effluent sampling.

21. On numerous occasions since calendar year 2000, staff of MDNR have visited the CJCUC and findings from many of their visits are referenced below.

22. A Preliminary Engineering Report as prepared by Fribis Engineering for CJCUC dated February 17, 2004 states that "during wet weather conditions . . . it appears that the water surface in the aeration tanks would rise near the top of the walls during most of the wet weather conditions. Furthermore, the same report states "Galligher Creek below the Raintree treatment plant facility was heavily impacted by the treatment plant's effluent. Dissolved oxygen content levels in the creek were well below the state mandated 5 mg/l".

Findings of Violation

23. The facts stated in paragraphs 12 through 22 above are herein incorporated.

Count I

24. Part C, 6. Water Quality Standards, of Respondent's permit includes the following general criteria for discharges from Outfall #001 to Galligher Creek:

- a. General criteria. The following water quality criteria shall be applicable to all waters of the state at all times including mixing zones. No water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting the following conditions:
 - (1) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses;
 - (2) Waters shall be free from oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses;
 - (3) Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses;
 - (4) Waters shall be free from substances or conditions in sufficient amounts to result in toxicity to human, animal or aquatic life;
 - (5) There shall be no significant human health hazard from incidental contact with the water;

- (6) There shall be no acute toxicity to livestock or wildlife watering;
- (7) Waters shall be free from physical, chemical or hydrological changes that would impair the natural and biological community; and
- (8) Waters shall be free from used tires, car bodies, appliances, demolition debris, used vehicles or equipment and solid waste as defined in Missouri's Solid Waste Law, section 260.200, RSMo, except as the use of such material is specifically permitted to pursuant to section 260.200-260.247.

25. During the EPA inspection described in paragraph 20, the discharge of activated sludge in extensive amounts from Outfall #001 to Galligher Creek caused at a minimum items 1, 3, and 7 above to be violated.

26. On July 7, 2003, February 9, September 1 and 7, November 18, 2004 and June 6 and 7, 2005, MDNR conducted an inspection of CJCUC's WWTF and observed significant sludge deposits in Galligher Creek below the outfall, causing, at a minimum, violation of items 1, 3, and 7 above to be violated.

27. Discharging sludge that results in a reduction of water quality standards outlined in paragraph 23 is a violation of the terms and conditions of the NPDES permit for the CJCUC and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count II

28. The NPDES permit for CJCUC states that the design flow for the plant is 64,000 gallons per day (gpd) and that the design population equivalent is 636.

29. Discharge Monitoring Reports (hereinafter "DMRs") submitted to MDNR for calendar years 2004 and 2005 indicate the flow of wastewater into the WWTF averaged 94,909 gpd and 100,019 gpd which are forty-eight percent (48%) and fifty-six percent (56%) over the daily design flow. Furthermore, DMRs submitted to MDNR indicate that the flow of wastewater during wet weather conditions consistently exceeds 120,000 gallons gpd, which was the measuring capacity of the existing flow meter. CJCUC installed a new flow meter with a higher measuring capacity in December 2005 and their DMR for that month documents a maximum daily flow of 151,000 gpd which is more than 130 percent over the design flow.

30. The CJCU's chronic operation of the WWTF beyond the permitted design flow is in violation of the terms and conditions of the NPDES permit for CJCU and as such, is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count III

31. The standard conditions set forth in the NPDES permit for CJCU states that any bypass or shut down of a wastewater treatment facility that results in a violation of permit limits or conditions is prohibited.

32. The NPDES permit for CJCU provides that the permittee shall notify MDNR in writing of all bypasses that result in a violation of permit limits or conditions.

33. The CJCU reported to MDNR bypasses and sewage spills which occurred on February 18, 2001 due to a blockage in a sewer line, March 31, 2003 due to a lift station failure, and October 6, 2005 due to a 4 inch pressure sewer. On all three occasions, raw wastewater was discharged to waters of the State of Missouri.

34. Bypasses of CJCU's wastewater treatment facility is a violation of the terms and conditions of the NPDES permit for the CJCU and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Order for Compliance

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 1 through 9.

1. Beginning with the effective date of this Order, Respondent shall submit to EPA:
 - a. A copy of its Discharge Monitoring Reports monthly.
 - b. Reports of sanitary sewer overflows and basement backups whenever they may occur. The reports shall include date, location, quantity of overflow or backup, a report of cleanup activities undertaken in response to the overflow and/or backup and whether Waters of the United States were reached.
 - c. A complete listing of all residences presently connected to the collection system to include the dates these residences were initially connected.

2. Within ten (10) days of the effective date of this Order, Respondent shall provide to EPA a copy of a plan for the operation and maintenance of the wastewater treatment plant that would optimize the existing collection system and plant operations to ensure that bypasses do not occur. The plan should emphasize sludge management.

3. Within thirty (30) days of receipt of this order, Respondent shall submit to EPA and MDNR for review and approval, a work plan for conducting a Sanitary Sewer Study to: a) identify sources of infiltration and inflow; b) identify current pressures in the collection system; c) identify and quantify SSO's; d) identify physical degradation of the collection system that causes or contributes to SSO's, grinder pump burnouts and private property backups; and e) identify specific areas of the collection system that are hydraulically overloaded. The work plan should provide for creating a map/schematic of the entire collection system as it currently exists and identify necessary future upgrades and should identify all existing data to be utilized for the study, additional data to be collected to include physical inspection and diagnostic testing of mains, laterals, manholes and lift stations and shall include an expeditious schedule for performing and completing the study.

a. If EPA and MDNR approve of the work plan, the work plan shall be implemented according to the schedule for implementation in the approved plan.

b. If EPA and MDNR disapprove the work plan with comments, CJCUC shall address the comments and resubmit the work plan for review within thirty (30) days of receipt of EPA and MDNR's disapproval.

c. Upon resubmission, EPA and MDNR, in their sole discretion, may either approve the work plan, or if EPA and MDNR determine that the work plan does not adequately address the comments provided by EPA and MDNR, EPA and MDNR may unilaterally modify the work plan, and will provide Respondent with a copy of the work plan as modified. Respondent shall implement the modified work plan according to the schedule contained therein.

4. Within thirty (30) days of completing execution of the work plan discussed in paragraph 3 of this Order, Respondent shall submit to EPA and MDNR a report fully discussing the findings of the Sanitary Sewer Study.

5. Within thirty (30) days of completing execution of the Sanitary Sewer Study discussed in paragraph 3 of this Order, Respondent shall develop and submit to EPA and MDNR a work plan, including a schedule, for completely addressing each of the findings of the Sanitary Sewer Study and correcting any deficiencies identified by the Sanitary Sewer Study.

a. If EPA and MDNR approve of the work plan, the work plan shall be implemented according to the schedule for implementation in the approved work plan.

b. If EPA and MDNR disapprove the work plan with comments, CJCU shall address the comments and resubmit the work plan for review within thirty (30) days of receipt of EPA and MDNR's disapproval.

c. Upon resubmission, EPA and MDNR, in their sole discretion, may either approve the work plan, or if EPA and MDNR determine that the work plan does not adequately address the comments provided by EPA and MDNR, EPA and MDNR may unilaterally modify the work plan, and will provide Respondent with a copy of the work plan as modified. Respondent shall implement the modified work plan according to the schedule contained therein.

6. Within thirty (30) days of completing execution of the work plan discussed in paragraph 5 of this Order, Respondent shall submit to EPA and MDNR a report fully discussing the improvements made to the waste water collection system and any other portion of the system.

7. Within thirty (30) days of receipt of this order, CJCU shall submit to EPA and MDNR for approval, a final facility plan containing full engineering details of construction and/or modification of its wastewater treatment facility and time lines for construction in order to achieve compliance with the flow limits set forth in its NPDES permit. At a minimum the following time line should be set forth in the plan.

a. Within sixty (60) days of receipt of MDNR and EPA's approval of the plan, Respondent should complete the bidding process and select a contractor.

b. On the first of each month following the selection of the contractor, Respondent shall submit to EPA and MDNR a monthly report detailing the status of the ongoing construction.

c. Within eight months of receipt of this order, Respondent shall reach substantial completion of the construction of the new WWTF.

d. Thirty (30) days prior to substantial completion, CJCU shall submit an application to MDNR for modification of the facility's NPDES operating permit.

In the Matter of:
Central Jefferson County Utilities, Inc.
Compliance Order

- e. Thirty (30) days prior to substantial completion, Respondent should submit an operation and maintenance plan for the new plant to EPA and MDNR for approval.
- f. Ninety (90) days after the modified operating permit is issued, CJCU must submit written verification of compliance with all of the requirements of the new permit.

8. All documents required to be submitted to EPA Region VII and MDNR for review and approval by this Order for Compliance shall be submitted to the addresses listed in paragraphs 10 & 11 below. Respondent shall upon receipt of comments from EPA and MDNR:

- a. If directed to modify the document by EPA and MDNR response, resubmit the document with such modifications to EPA and MDNR within fifteen (15) days of receipt of EPA's comments (or such other time as directed in writing by EPA), and
- b. When directed by EPA and MDNR's response, execute the provisions of the document as directed by this Order.

9. Upon completion of the requirements of paragraphs 1 through 8 of this Order for Compliance, Respondent shall provide a written statement signed by a principal executive officer or a ranking elected official to the EPA, Region VII. The statement shall contain the following certification:

I certify under penalty of law that the Central Jefferson County Utilities, Inc. has complied with all the applicable requirements of the Order for Compliance. I also certify 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 violations.

Submissions

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

In the Matter of:
Central Jefferson County Utilities, Inc.
Compliance Order

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

11. A copy of documents required to be submitted to the MDNR by this Order, shall be submitted by mail to:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Michael Struckhoff, Regional Director
St. Louis Regional Office
Missouri Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, Missouri 63125

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

12. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

13. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 the 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

14. Nothing in this Order shall limit the 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.

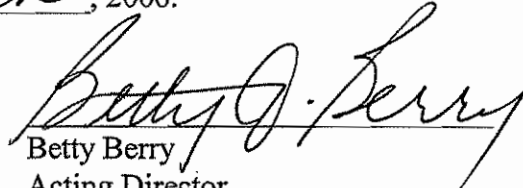
Severability

15. 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.

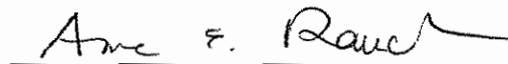
Effective Date

16. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

Issued this 2nd day of March, 2006.



Betty Berry
Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101



Anne E. Rauch
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

In the Matter of:
Central Jefferson County Utilities, Inc.
Compliance Order

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 Administrative 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 Order for Compliance by first class certified mail, return receipt requested, to:

Kenneth McClain
Jeremiah Nixon
1519 McNutt Road
Herculaneum, Missouri 63048

Mr. Daniel Schuette, Director
Division of Environmental Quality
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Michael Struckhoff, Regional Director
St. Louis Regional Office
Missouri Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, Missouri 63125

3/2/06
Date

Amy Gonzalez