

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2016-0043
The City of Columbia, Missouri)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE
)	ON CONSENT
Proceedings under Section 309(a) of the)	
Clean Water Act, 33 U.S.C. § 1319(a))	
_____)	

Preliminary Statement

1. This Administrative Order for Compliance on Consent (“Order on Consent”) is issued by the United States Environmental Protection Agency (“EPA”) pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the EPA to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. Respondent is the City of Columbia, Missouri (“Respondent” or “City”), a municipality chartered under the laws of the State of Missouri (“Missouri”). Respondent is the owner and/or operator of the Columbia Landfill and Yard Waste Compost Facility, located in Boone County, Missouri.

3. The EPA, together with the City enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent, through entering into this Order, to address alleged noncompliance by the City in violation of its National Pollutant Discharge Elimination System (“NPDES”) industrial stormwater permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the City to attain compliance with the CWA and its NPDES industrial stormwater permit.

By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3)

consents to be bound by the requirements set forth herein. Respondent also 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 on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The Parties agree that this waiver does not apply to Respondent's right to defend an action or raise related claims for acts or omissions that are in breach of the terms of this Order.

Statutory and Regulatory Framework

6. Section 301(a) of CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System permit.

7. 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 CWA, 33 U.S.C. § 1362.

8. Section 402(p) of CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of CWA.

9. 40 C.F.R. § 122.26(b)(14) defines a stormwater discharge that is “associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 49, which includes electric, gas, and sanitary services. *See* 40 C.F.R. § 122.26(b) (14)(xi).

10. Pursuant to Section 402(p) of CWA, 33 U.S.C. § 1342(p), the EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

11. 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 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. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

General Allegations

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

14. At all times relevant to this action, Respondent was the owner and operator of a facility, Columbia Landfill and Yard Waste Compost Facility (“Site”), located at 5700 Peabody Road, Columbia, Missouri 65202.

15. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s facility and flows into tributaries of Hinkson Creek. The runoff and drainage from Respondent’s facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

16. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Site has "storm water discharge associated with industrial activity", specifically discharges associated with "facilities classified as Standard Industrial Classifications ... 49" as defined by 40 C.F.R. § 122.26(b)(14)(xi) and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Respondent discharged pollutants into tributaries of Hinkson Creek and Hinkson Creek, “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

19. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

20. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. MDNR issued the Respondent NPDES Permit No. MO-0112640, which became effective on January 28, 2011, was revised on January 28, 2013, expired on January 27, 2016, and has been administratively extended until a new permit is issued. The permit governs stormwater discharges associated with industrial activity.

22. On or about April 23, 2014, the EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the Site in accordance with the CWA.

Specific Allegations

Effluent Limit Violations

23. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

24. Section 5.1.2 of Respondent’s NPDES permit, “Site Description”, requires Respondent to meet a monthly average and daily max effluent limits for Total Suspended Solids, Oil and Grease, Biochemical Oxygen Demand, Chemical Oxygen Demand, and Iron.

25. During the EPA inspection referenced in Paragraph 22, the inspector noted Respondent was in frequent exceedance of effluent parameters. Further review of Respondent’s sampling documented the following effluent exceedance:

<u>Date</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Monthly Avg./Daily Max (Concentration Unit)</u>	<u>Permit Limit</u>	<u>Monitored Exceedance</u>
December 2011	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	70	92
December 2011	Total Suspended Solids (TSS)	006	Monthly Avg. (mg/L)	50	55
February 2012	BOD, 5-day, 20 deg. C	005	Monthly Avg. (mg/L)	30	34
February 2012	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	87
March 2012	Iron, total recoverable	003	Monthly Avg. (ug/L)	819	1500
March 2012	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	58
April 2012	BOD, 5-day, 20 deg. C	005	Monthly Avg. (mg/L)	30	33
April 2012	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	73
June 2012	Iron, total recoverable	003	Monthly Avg. (ug/L)	819	1400
December 2012	Iron, total recoverable	004	Monthly Avg. (ug/L)	819	1400
January 2013	Oil and grease (soxhlet extr.) tot.	005	Monthly Avg. (mg/L)	10	14
January 2013	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	170
January 2013	Total Suspended Solids (TSS)	005	Daily Max. (mg/L)	100	170
March 2013	Total Suspended Solids (TSS)	006	Monthly Avg. (mg/L)	50	82.6

March 2013	BOD, 5-day, 20 deg. C	007	Monthly Avg. (mg/L)	30	60
March 2013	Chemical Oxygen Demand (COD)	007	Monthly Avg. (mg/L)	60	105
March 2013	Total Suspended Solids (TSS)	006	Daily Max. (mg/L)	100	160
March 2013	BOD, 5-day, 20 deg. C	007	Daily Max. (mg/L)	45	120
March 2013	Chemical Oxygen Demand (COD)	007	Daily Max. (mg/L)	90	210
April 2012	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	110
April 2012	Total Suspended Solids (TSS)	005	Daily Max. (mg/L)	100	110
May 2013	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	62
June 2013	Iron, total recoverable	003	Monthly Avg. (ug/L)	819	8700
June 2013	Total Suspended Solids (TSS)	003	Monthly Avg. (mg/L)	50	260
June 2013	Iron, total recoverable	004	Monthly Avg. (ug/L)	819	2100
June 2013	Total Suspended Solids (TSS)	004	Monthly Avg. (mg/L)	50	93
June 2013	Total Suspended Solids (TSS)	006	Monthly Avg. (mg/L)	50	120
June 2013	Chemical Oxygen Demand (COD)	007	Monthly Avg. (mg/L)	60	64.75
June 2013	Iron, total recoverable	007	Monthly Avg. (ug/L)	819	3600
June 2013	Total Suspended Solids (TSS)	007	Monthly Avg. (mg/L)	50	100
June 2013	Iron, total recoverable	003	Daily Max. (ug/L)	1643	8700
June 2013	Total Suspended Solids (TSS)	003	Daily Max. (mg/L)	80	260
June 2013	Iron, total recoverable	004	Daily Max. (ug/L)	1643	2100
June 2013	Total Suspended Solids (TSS)	004	Daily Max. (mg/L)	80	93
June 2013	Total Suspended Solids (TSS)	006	Daily Max. (mg/L)	100	120

June 2013	Chemical Oxygen Demand (COD)	007	Daily Max. (mg/L)	90	107
June 2013	Iron, total recoverable	007	Daily Max. (ug/L)	1643	3600
June 2013	Total Suspended Solids (TSS)	007	Daily Max. (mg/L)	80	100
November 2013	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	53
March 2014	Iron, total recoverable	003	Monthly Avg. (ug/L)	819	1600
June 2014	Iron, total recoverable	003	Monthly Avg. (ug/L)	819	2400
June 2014	Iron, total recoverable	003	Daily Max. (ug/L)	1643	2400
October 2014	Total Suspended Solids (TSS)	005	Monthly Avg. (mg/L)	50	150
October 2014	Total Suspended Solids (TSS)	005	Daily Max. (mg/L)	100	150
December 2014	Iron, total recoverable	002	Monthly Avg. (ug/L)	819	3200
December 2014	Iron, total recoverable	004	Monthly Avg. (ug/L)	819	1800
December 2014	Total Suspended Solids (TSS)	006	Monthly Avg. (mg/L)	50	130
December 2014	Iron, total recoverable	002	Daily Max. (ug/L)	1643	3200
December 2014	Iron, total recoverable	004	Daily Max. (ug/L)	1643	1800
December 2014	Total Suspended Solids (TSS)	006	Daily Max. (mg/L)	100	130
March 2015	Iron, total recoverable	004	Monthly Avg. (ug/L)	819	910
September 2015	Iron, total recoverable	004	Daily Max. (ug/L)	1643	1800
September 2015	Iron, total recoverable	004	Monthly Avg. (ug/L)	819	1800
September 2015	Total Suspended Solids (TSS)	004	Daily Max. (mg/L)	80	81
September 2015	Total Suspended Solids (TSS)	004	Monthly Avg. (mg/L)	50	81
March 2016	Iron, total recoverable	004	Monthly Avg. (ug/L)	819	910

26. Respondent's alleged failure to meet effluent limits is a violation of the NPDES

permit, and as such, is a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p), and implementing regulations.

Reasonable Time to Achieve Compliance

27. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the alleged violations, the EPA finds that three hundred and sixty-five (365) days from the Effective Date of this Order is a reasonable time for Respondent to achieve compliance with the terms and conditions of its NPDES Permit, MO-0031585.

Order for Compliance

28. 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), the City is hereby ORDERED to take the actions described below.

29. Within thirty (30) days of the Effective Date, as defined in Paragraph 40 herein, Respondent shall commence actions to correct the deficiencies identified in this Order and to come into compliance with the requirements of its NPDES Permit consistent with Paragraph 27.

30. Within forty-five (45) days of the receipt of this Order, the City shall submit to the EPA, with a copy to MDNR, a report describing the measures taken and procedures implemented, and/or will be taken or implemented in the future, by the City to ensure compliance with its NPDES permit, including the violations cited above. Following the submission of that report, Respondent shall submit quarterly updates as detailed in Paragraph 32 below. Quarterly updates should detail any changes made to the City's original submission regarding measures to be taken or implemented to ensure compliance with the City's NPDES permit.

31. After review of the information submitted by the City pursuant to the above Paragraphs, the EPA may determine that additional information is needed and/or additional corrective measures or deadlines are appropriate, and may modify this Order by written agreement of both parties or may initiate a separate enforcement action consistent with Paragraph 37 as appropriate.

Submissions

32. *Reporting to the EPA and MDNR:* In accordance with Paragraph 30 above, the City shall submit to the EPA, with a copy to MDNR, quarterly reports describing the actions the City has taken to comply with the terms of this Order. Quarterly reports, including all discharge monitoring reports, shall also be made publicly available on the City's website during the duration of this Order. The reports shall be made available on the City's website in a format and location that is easily accessible and understandable by the general public. These reports are due every April 28, July 28, October 28, and January 28 until termination of this Order pursuant to

Paragraph 41 below; the first report is due (October 28). The City's report shall include, at a minimum:

- a. A listing of NPDES permit exceedances, if any, that occurred during the reporting period;
- b. A description of the actions taken by the City to mitigate and minimize or prevent future recurrences of permit exceedances, if any, that occurred during the reporting period; and
- c. For submittal to the EPA only, a copy of that reporting period's quarterly Discharge Monitoring Reports. The City must submit DMRs to MDNR as required by its NPDES permit.

33. All submissions by to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify that the City of Columbia has complied with all the applicable requirements of the Order for Compliance on Consent. I also 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 violations.

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

Seth Draper, or his successor
Environmental Scientist
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

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

General Provisions

Effect of Compliance with the Terms of this Order

36. Consistent with the City's Consent Agreement/Final Order, Docket No. CWA-07-2016-0044, compliance with the terms of this Order shall not relieve the City 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.

37. 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 CWA, 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 CWA for any violation whatsoever.

Access and Requests for Information

38. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect the City's facility, and/or to request additional information from the City, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

39. If any provision or authority of this Order, or the application of this Order to the City, is held by federal judicial authority to be invalid, the application to The City of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

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

Termination

41. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice of termination shall not be unreasonably withheld.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this _____ day of _____, 2016.

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

FOR THE CITY OF COLUMBIA, MISSOURI

By: _____

Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

Date

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

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 on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

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

Aimee Davenport
Attorney, City of Columbia, Missouri
Evans & Dixon, L.L.C.
501 West Cherry Street
Suite 200
Columbia, MO 65201-4210

and via first class mail to:

Paul Dickerson, Environmental Manager
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

Irene Crawford, Director
Northeast District Office
Missouri Department of Natural Resources
1709 Prospect Drive
Macon, MO 63552-2602

Date

Signature