

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

July 9, 2014

**Michael N. Hutcherson, PhD, PE, Appeal of
Issuance of City of Jonesburg CertainTeed Sanitary Sewer Extension Project
Construction Permit, #CPSE00868
Montgomery County MO**

Issue: The Missouri Department of Natural Resources' Water Protection Program issued the Sewer Extension Construction Permit for the city of Jonesburg CertainTeed Sanitary Sewer Extension Project, permit number CPSE00868, on February 10, 2014 with an expiration date of February 9, 2015. Michael N. Hutcherson appealed the permit issuance on March 12, 2014, recommending the permit be withdrawn and cancelled due to the route of the proposed pressurized wastewater line to serve the proposed Asphalt Shingle Manufacturing Facility.

Background: Extensive information on this appeal is contained in the records of the Administrative Hearing Commission (AHC), which have been provided to the Clean Water Commission. A brief summary follows. The Department received a Preliminary Engineering Report (PER) for the city of Jonesburg on December 26, 2013. The Department issued comments on the PER. On December 31, 2013, the Department received the revised PER. The Department approved the PER on January 10, 2014. The Department received a construction permit application for a sewer extension from the city on January 13, 2014. The Department reviewed the application, which included the plans and specifications, for compliance with 10 CSR 20-6 Permits and 10 CSR 20-8 Design Guides. The Department issued sewer extension construction permit number CPSE00868 on February 10, 2014 approving the plans and specifications. On April 25, 2014, the Department received an addendum to the PER from the city increasing the flow from the proposed sewer extension. The engineer certified that the revised flow is still "well within the capacity" of the sewer system, because even with the increase, it was within the amount already approved.

The AHC conducted a hearing on April 30, 2014. The AHC considered the issues raised by Hutcherson, and determined that the Department issued the permit in accordance with the Missouri Clean Water Law. On May 15, 2014, the AHC recommended that the Clean Water Commission deny the request of Hutcherson to withdraw and cancel the construction permit and uphold the Department's issuance of the construction permit.

Staff Recommendation: The Department recommends that the Clean Water Commission uphold the issuance of permit CPSE00868 as recommended by the Missouri Administrative Hearing Commission. However, the Clean Water Commission may change a finding of fact or conclusion of law made by the AHC, or may vacate or modify the recommended decision issued by the AHC if the Clean Water Commission states in writing the specific reason for a change.

List of Attachments:

- Administrative Hearing Commission's Recommended Decision

Before the
Administrative Hearing Commission
State of Missouri



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IN RE: CITY OF JONESBURG,
PERMIT NUMBER CPSE00868

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No.14-0343 CWC

RECOMMENDED DECISION

The Administrative Hearing Commission (“AHC”) recommends that the Clean Water Commission (“CWC”) deny the request of Michael N. Hutcherson, PhD, PE, to withdraw and cancel the Construction Permit (“the permit”) for a municipal wastewater treatment facility that the Department of Natural Resources (“DNR”) issued to the City of Jonesberg, Missouri (“the City”).

Procedure

On March 12, 2014, Hutcherson filed a complaint appealing DNR’s decision to issue the permit. On April 15, 2014, the City filed a motion to intervene, which we granted by order issued April 16, 2014. On April 30, 2014, we held a hearing. Assistant Attorney General Darren P. Eppley represented DNR. Amber L. Barga represented the City. Hutcherson represented himself. The matter became ready for our decision on June 6, 2014, the date Hutcherson’s written argument was due. Because he filed nothing, no reply briefs were due. To the extent that this decision references the Operating Permit, issues surrounding that permit were determined in our recommended decision in *In re City of Jonesburg Permit Number MO-0040851*, No. 14-0132 CWC (AHC May 15, 2014).

Findings of Fact

1. The City held a valid permit (“pre-existing Permit”) to discharge treated effluent to waters. The permit (MO-0040851) contained an expiration date of September 14, 2011.
2. On March 14, 2011, the City submitted an application to DNR to renew the pre-existing permit.
3. On December 26, 2013, the City’s consultant engineer e-mailed DNR’s permit review engineer, Emily Carpenter, a copy of the City’s preliminary engineering report for the proposed construction of a sewer extension. Carpenter provided comments and asked for additional information.
4. On December 27, 2013, DNR issued the final renewal Operating permit, with an effective date of January 1, 2014.
5. On December 31, 2013, the City submitted a Preliminary Engineering Report to DNR.
6. Carpenter determined that the Preliminary Engineering Report was satisfactory and approved the document on January 10, 2014.
7. On January 13, 2014, the City submitted an application (dated January 8, 2014) for a sewer extension construction permit.
8. Carpenter reviewed the City’s application. The project “was approximately 1,700 feet of eight-inch PVC gravity sewer, one triplex pump station, a standby generator, 5,000 feet of four-inch PVC force main.”¹
9. Carpenter checked the form of the application, checked to see if the City was involved in an enforcement action, the discharge monitoring reports, and the plans and

¹ Tr. at 29.

specifications for consistency with DNR's design guide. She determined that the application complied with state regulations.

10. Carpenter drafted the construction permit and sent it to her supervisor, Byron Shaw, who approved it.

11. On February 10, 2014, DNR issued sewer extension construction permit CPSEOO868 to the City, approving the plans and specifications, as submitted.

12. On April 25, 2014, DNR received an addendum to the engineering report from the City increasing the flow of gallons per day of the proposed sewer extension. The engineer certified that the amount was "well within capacity"² because, even with the increase, it was within the amount already approved.

Conclusions of Law

We have jurisdiction to hear a complaint appealing a decision of DNR.³ We exercise the authority to conduct a hearing and recommend a decision to certain commissions within DNR, including the CWC.⁴ DNR has the burden of proof that the permit was properly issued.⁵

Regulation 10 CSR 20-6.010(4) identifies the requirements of a sewer construction permit application and applies to sewer extensions. Regulation 10 CSR 20-8 "Design Guides" identifies the civil engineering requirements for sewer systems and sewage treatment facilities.

Hutcherson does not challenge the sewer extension construction permit in general, only a very limited portion. Hutcherson acknowledged that he was not attacking the "nuts and bolts of the civil engineering design."⁶ He does not challenge the detailed engineering design of the

² Tr. at 32.

³Section 621.250. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

⁴*Id.*

⁵ Section 640.012.

⁶ Tr. at 18.

sewer extension or the civil engineering requirements imposed by the regulations. Instead, he challenges only the placement of the sewer line at a particular location – the applicant’s selected alignment of the sewer extension at that location.

DNR counters that the alignment is selected by the applicant – in this case, the City – and the applicant remains responsible for obtaining all necessary easements and approvals to install the sewer extension. As noted above, DNR reviews an application for a sewer extension construction permit for compliance with 10 CSR 20-6 (permits) and 10 CSR 20-8 (design guides). These requirements do not address how or why the applicant has selected a proposed alignment, but rather deal with the civil engineering requirements for the proposed project to ensure the project is constructed properly.

Hutcherson attempted to introduce evidence and testimony that a portion of the sewer line would travel through a human burial ground or through buried hazardous waste. We sustained objections to this evidence because it was beyond the scope of the hearing and because it was not provided in response to discovery. In any event, his evidence appeared to rely solely on his own statements.

Carpenter outlined the review process, and described the application as “very ordinary.”⁷ After her review, she had no further comments for the City and drafted the construction permit. Shaw reviewed Carpenter’s work and concluded that the construction permit should be issued.

We agree that Hutcherson’s challenge to the alignment or location of the sewer extension is beyond the scope of our review because it is beyond the permit application requirements. DNR met its burden of proof that it issued the construction permit in accordance with the Missouri Clean Water Law and implementing regulations.

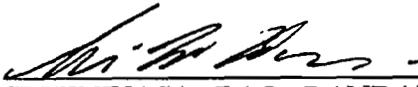
Therefore, the AHC recommends that the construction permit be upheld.

⁷ Tr. at 29.

Summary

The AHC recommends that the CWC uphold DNR's issuance of the City's permit.

SO RECOMMENDED on June 18, 2014.



SREENIVASA RAO DANDAMUDI
Commissioner

