



Jeremiah W. (Jay) Nixon, Governor • Mark N. Templeton, Director

DEPARTMENT OF NATURAL RESOURCES

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Mr. William A. Spratlin, Director
Water, Wetlands, & Pesticides Division
EPA Region VII
901 North 5th Street
Kansas City, KS 66101

RE: Response to the Interim Objection for the Little Blue Valley Sewer District-Atherton Wastewater Treatment Plant Draft Permit.

Dear Mr. Spratlin:

On February 20, 2009, the Missouri Department of Natural Resources (Department) received the Environmental Protection Agency Region 7 (EPA), interim objection to the Little Blue Valley Sewer District (LBVSD) – Atherton Plant, draft Missouri State Operating Permit number MO-0101087 (operating permit). In the interim objection, you indicate that the Atherton facility at flows in excess of 100 Million Gallons Per Day (MGD) has a flow diversion system that constitutes a bypass under 40 CFR 122.41(m) and you request the Department to make a “no feasible alternatives” demonstration in order that the bypass may be allowed under the permit. This interim objection prevents the Department from reissuing an existing permit and unless a solution can be reached that allows the issuance of this renewed permit, the effect of this interim objection has the potential to delay the implementation of other beneficial water quality based effluent limits such as E. coli and ammonia for the LBVSD Atherton facility.

Perhaps more importantly, this interim objection also calls into question the ability of the Department to renew any permits statewide that have been issued and reissued on multiple occasions for wastewater treatment facilities that employ in-plant bypassing as a means to handle peak wet weather flows at their treatment facilities. The Department understands EPA’s position that facilities conduct a “no feasible alternatives” analysis to demonstrate that there are no feasible alternatives to a bypass at the treatment plant. However, after discussions with professional engineers in the consulting community, we have learned that a complete “no feasible alternatives” analysis will cost communities, depending upon their size, somewhere around \$200,000. While this cost for large communities is significant and should be considered carefully, this cost for smaller communities, particularly in this economic climate, is potentially devastating. We strongly urge EPA to exercise maximum flexibility in working with the Department and Missouri’s communities to ensure that apposite “no feasible alternatives” analyses are required for Missouri communities considering the wide range of conditions and circumstances of our communities.

Specifically regarding the LBVSD Atherton facility, for flows between 100 MGD and 300 MGD, the Atherton facility utilizes a chemically enhanced primary clarification auxiliary treatment system through the four primary clarifiers at the facility. The facility's four primary clarifiers are designed for chemical addition for all flow that enters the plant in the range of 100 MGD to 300 MGD. Once the flow is treated by the auxiliary treatment system, 100 MGD is sent through the standard treatment train of the facility and the excess flow is recombined with the standard treatment train prior to discharge. EPA has indicated that this practice constitutes a bypass under 40 CFR 122.41(m). The Department does not dispute the definition of bypass under 40 CFR 122.41(m)(1)(i), however, the Department believes that EPA is not correctly interpreting 40 CFR 122.41(m)(4)(B) when auxiliary treatment systems are used for treating wet-weather excess flows. We believe that a correct interpretation of the bypass definition should recognize the following:

- The term diversion in the bypass definition at 40 CFR 122.41(m)(1)(i) implies that flows will be decreased to some portion of the treatment facility. Flows are not decreased to any portion of the treatment facility during wet-weather treatment. Flows are actually increased to all portions of the treatment facility. Therefore, using auxiliary treatment systems for wet-weather excess flows is not a diversion nor is it a bypass.
- The intent of the bypass provisions under 40 CFR 122.41(m) is to ensure proper operation and maintenance and to prevent Publicly Owned Treatment Works (POTW) operators from unnecessarily taking process units out of service and providing lower levels of treatment during normal dry-weather conditions. It was not intended to prevent POTW operators from bringing auxiliary treatment facilities into service to provide higher levels of treatment during wet-weather events.
- 40 CFR 122.41(m)(4)(B) indicates that facilities that use auxiliary treatment facilities are mitigating considerations in the determination of a bypass.
- 40 CFR 122.41(m)(2) allows bypassing for "essential maintenance to assure efficient operation" so long as effluent limitations are not exceeded. We contend that the use of auxiliary treatment facilities is not a bypass. One of the primary purposes for their use is to provide essential maintenance of the biomass in the standard treatment train during wet-weather events. Recovery from loss or damage to the biomass can take weeks, during which time the POTW would not be operating efficiently and providing the best possible treatment.

This regulation recognizes the need for auxiliary treatment systems at wastewater treatment plants and appears to act to limit bypasses at treatment plants to intentional diversions where no auxiliary treatment system is utilized. In the absence of formal federal guidance on wet weather flows from EPA, which would include a discussion of auxiliary treatment systems, the Department believes it is reasonable to conclude that the diversion of flow at a wastewater treatment facility that employs the usage of an auxiliary treatment system is not a bypass and permissible in accordance with 40 CFR 122.41(m)(4)(B). If it is otherwise interpreted, this

would constitute a change in the interpretative reading of the regulation and require under the Administrative Procedures Act a public notice and comment.

The Department does not agree that the previously described auxiliary treatment system utilized by the Atherton facility for flows between 100 and 300 MGD constitutes a bypass in accordance with 40 CFR 122.41(m)(4)(B). The Department does, however, agree with EPA that primary clarification alone is not an auxiliary treatment system and consequently, will consider all flows in excess of 300 MGD to be an anticipated bypass that require a “no feasible alternatives” analysis before these flows can be approved by the permit. The Department will revise the permit to require a “no feasible alternatives” analysis for all anticipated bypass flows in excess of 300 MGD prior to inclusion of those flows and their associated flow diversion description in the permit.

I would like to take a moment to point out a unique and I believe a mitigating circumstance in terms of the content of the “no feasible alternatives” analysis. As you may know, the LBVSD was formed and operates as a wholesale sewer district that receives wastewater flow from several communities in Jackson and Cass counties. According to the charter of the LBVSD, they are required to treat all wastewater flow from the upstream communities with no authority nor responsibility for the construction, operation, maintenance and replacement of the sewage collection systems in those communities. This creates a unique condition for the Atherton facility as it will be required to conduct a “no feasible alternatives” analysis which involves the assessment and inclusion in the analysis of inflow and infiltration reduction efforts in the collection system as one means to ensure long term reduction of flows at the treatment facility. This may not be directly possible as LBVSD has no legal authority to compel the satellite communities to reduce the amount of flow they send to the Atherton facility. It is our desire for EPA to recognize and understand that the “no feasible alternatives” analysis that LBVSD provides will be unique to the circumstances associated with the acceptance of wastewater from satellite communities. It is our desire to involve EPA early in the preparation and evaluation of the analysis by LBVSD.

Further, the blending policy and a “no feasible alternative” review were determined in 2005 to require further review and development of alternative approaches. On May 19, 2005, EPA issued a press release called “Blending Policy Revisited” and that press release indicated “EPA will continue to review policy and regulatory alternatives to develop the most feasible approaches to treat wastewater and protect communities, upstream and downstream.” On February 14, 2005, the Congressional Research Service for The Library of Congress published a report entitled “EPA’s Proposed Policy on Wastewater Blending: Background and Issues”. It notes in its conclusions that EPA has not issued a final version of the policy or guidance and noted that one of the remaining issues to be developed was “whether guidance must require municipalities to conduct a ‘no feasible alternatives’ analysis to prove that blending is necessary”. The Department received a copy of a letter dated December 18, 2008, from Ken Kirk, National Association of Clean Water Agencies to Ben Grumbles. In that letter, Mr. Kirk

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questioned Region 7's implementation of the "no feasible alternatives" analysis approach when it had been agreed at a national level that if such an approach were to be implemented, further guidance and materials would need to be developed. In a recent Wet Weather Workshop hosted by the EPA Region 7 staff, headquarters and regional staff presented information to the 4 states in attendance that indicated that very little additional policy development or guidance appears to have been completed since 2005. Yet, EPA has decided to offer an interim objection to a permit that they believe authorizes in plant bypassing without a "no feasible alternatives" analysis. As mentioned previously, there will likely be other communities that will be facing a similar situation in terms of anticipated bypassing at their wastewater treatment facilities. In an effort to understand and streamline the permit issuance process and provide direction for dischargers in Missouri, the Department requests EPA provide recent examples of approved "no feasible alternatives" analysis from other states that have completed the required analysis and copies of the permits where the "no feasible alternatives" analysis was included.

The Department believes this letter satisfies 40 CFR § 123.41(m)(4) for the LBVSD Atherton interim objection. The Department will work with the EPA to resolve this matter. Upon resolution and subsequent notification by EPA, the Department will commence the operating permit issuance process, which may constitute an additional Public Notice Review Period.

If you have any further comments and concerns, please contact Mr. Robert Morrison, P.E., Chief, Department of Natural Resources, Water Pollution Control Branch, P.O. Box 176, Jefferson City, Missouri 65102-0176, by telephone at (573) 526-0991 or by email at rob.morrison@dnr.mo.gov. Thank you.

Sincerely,

DIVISION OF ENVIRONMENTAL QUALITY



Daniel R. Schuette
Director

DRS:rms

c: John Reece, LBVSD