

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 Missouri State Operating Permit, #MO-0040851
Jonesburg Wastewater Treatment Facility
Montgomery County MO**

Issue: The Missouri Department of Natural Resources' Water Protection Program issued the Missouri State Operating Permit (MSOP) renewal for the city of Jonesburg Wastewater Treatment Facility, permit #MO-0040851, on December 27, 2013, with an effective date on January 1, 2014. Michael N. Hutcherson appealed the permit issuance on January 27, 2014, requesting that the permit be withdrawn and cancelled.

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 permit renewal application from the city on March 14, 2011. The Department reviewed the application, following all necessary permitting review standard operating procedures, which showed that the facility is in good standing and that drafting of the renewal permit could proceed as normal. The Department drafted a renewal permit in accordance with the Missouri Clean Water Law. This draft renewal permit was issued for Public Notice on June 13, 2013. The Department received comments from the city, which included submittal of a Time of Travel study for consideration of ammonia decay in the receiving stream and an affordability analysis. The Department incorporated this information into the permit, which altered the final effluent limitations for ammonia and extended the Schedule of Compliance (SOC) to meet those final effluent limitations. These changes required an additional Public Notice period of 30 days, issued on October 17, 2013. No comments were received during this second Public Notice period and the Department proceeded with issuance of the final MSOP renewal permit on December 27, 2013, with an effective date of January 1, 2014. Michael N. Hutcherson submitted a letter to the Department dated December 30, 2013, expressing his concerns about the permit. The Department responded to those concerns. On January 27, 2014, Hutcherson filed a complaint appeal of the final issued renewal permit. The AHC conducted a hearing on April 1, 2014. The AHC considered the issues raised by Hutcherson, and determined that the Department issued the final 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 to permit and uphold the Department's issuance of the permit.

Staff Recommendation: The Department recommends that the Clean Water Commission uphold the issuance of permit MO-0040851 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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MAY 16 2014
MISSOURI
ATTORNEY GENERAL

IN RE: CITY OF JONESBURG
PERMIT NUMBER MO-0040851

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No.14-0132 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 Operating 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 January 27, 2014, Hutcherson filed a complaint appealing DNR’s decision to issue the permit. On March 3, 2014, the City filed a motion to intervene, which we granted by order issued March 4, 2014. On April 4, 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 May 9, 2014, the date Hutcherson’s written argument was due. Because he filed nothing, no reply briefs were due.

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. DNR's assigned permit writer, Logan Cole, compared the application to the pre-existing permit, examined the discharge monitoring reports, and reviewed stream surveys.

4. The discharge monitoring reports for the previous five-year period show that the City was in compliance with its permit, except for a single violation of a permit limit in 2008.

5. Cole added final effluent limitations for ammonia and added oil and grease effluent limits to the pre-existing permit.

6. On June 13, 2013, DNR issued a draft renewal permit.

7. DNR issued public notice documents to the City and the City's Postmaster.

8. The public notice documents were posted and the public comment period on the draft renewal permit lasted for 30 days.

9. The only comments received during the public comment period were on behalf of the City, including a time of travel study and an affordability analysis.

10. A "time of travel study" is a study providing the amount of time it takes "for discharge from the end of pipe to reach the first confluence of the first classified stream."¹ The City's time of travel study provided that the time of travel of the effluent and the decay of pollutants from the treatment facility to the classified segment of Little Bear Creek was 0.23 days.

11. The time of travel study submitted by the City impacted only the ammonia effluent limit. The daily maximum ammonia level in the summer was increased from 5.2 milliliters ("ml") per liter to 5.8 ml per liter. The average monthly ammonia level in the summer (April 1 – Sept. 30) was increased from 1.3 to 1.5 ml per liter. The daily maximum ammonia level in the

¹ Tr. at 27-28. Hutcherson also refers to the City's time of travel study as the "stream study" and the "Cochran report." Tr. at 38.

winter (Oct. 1 – March 31) was increased from 7.6 to 7.8 ml per liter, and the monthly average was unchanged. The levels in the revised permit were within the allowable effluent concentrations for ammonia.

12. The affordability analysis resulted in a longer schedule of compliance in the revised permit.

13. Because of the changes in the revised permit, DNR issued a revised draft permit for public notice.

14. On October 17, 2013, DNR issued the revised draft permit for public notice and sent copies of the public notice to the City and the City's Postmaster. The documents were posted, and DNR received postcards from the City confirming that the documents were posted.

15. No comments were received on the revised draft permit.

16. DNR issued the final renewal permit on December 27, 2013, with an effective date of January 1, 2014.

17. By letter to DNR dated December 30, 2013, Hutcherson expressed concerns about the permit.

18. By letter dated January 21, 2014, DNR responded to Hutcherson's letters received on January 7, 2014, January 20, 2014, and January 16, 2014.²

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.⁴ DNR has the burden of proof that the permit was properly issued.⁵

² Respondent's ex. 18. While the letter from DNR is in evidence, we do not have copies of the three letters from Hutcherson referenced in DNR's letter.

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

⁴*Id.*

⁵ Section 640.012.

The City's pre-existing permit contained an expiration date of September 14, 2013, and the City submitted a renewal application on March 14, 2013. Therefore, the City's application for a renewal permit satisfied the requirement to submit the renewal application by 180 days prior to the permit expiration in accordance with 10 CSR 20-6.010(5)(C).

DNR's evidence showed that it provided public notice of the draft renewal permit on June 13, 2013, and October 17, 2013, in accordance with 10 CSR 20-6.020(1)(E) by providing the public notice to the City's Postmaster and the City's clerk for posting in the post office and municipal building. DNR considered comments on the draft renewal permit submitted during the public comment period.

Hutcherson attacked the time of travel study, arguing that some of the figures within it were incorrect. But he had not previously detailed to DNR, nor to the AHC, at the hearing, what was incorrect about them or how that affected the permit process. Cole testified that the study was consistent with DNR's methodology, that he had no reason to believe the figures were false, and that he did not believe a site inspection was necessary. DNR's Unit Chief of the Domestic Wastewater Unit and expert witness, Curtis Gately, testified that the time of travel study would not have influenced whether the permit was issued, and resulted in only small changes in the ammonia levels. He testified that the City's permit met the requirements of the Missouri Clean Water Law.

Hutcherson argued that the public notice documents were not posted as required by law.

But there was no evidence or testimony other than Hutcherson's that supported this allegation. DNR received postcards affirming the posting. When DNR receives postcards from the permittee, it considers the posting requirement fulfilled and makes no further investigation. Hutcherson questioned the lack of comments except for those from the City to support his contention that there was inadequate posting. But Cole testified that it is not unusual for there to be no comments from the public in this type of permit case. Gately called a third party response

to a domestic wastewater permit “almost rare.”⁶ As the AHC noted during the hearing, any allegations Hutcherson made about Chapter 610, RSMo. violations, such as his being removed from a public meeting at which the permit was discussed, are beyond the jurisdiction of the AHC and the CWC.

Hutcherson argues that the City has annexed 186 acres with plans to operate an asphalt shingle manufacturing facility and questioned whether knowledge of this would have changed DNR’s opinion on issuing the permit. Gately testified that such knowledge would not have affected the issuance of the permit because any additional wastewater flow would have to be approved by DNR.

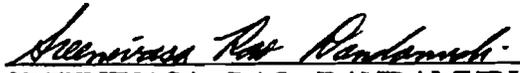
Hutcherson characterizes the City’s facility as a “very, very old machine.”⁷ But the City has a history of demonstrated compliance with its permit requirements, with only a single violation in the five-year period before the issuance of the renewal permit. DNR’s review and processing of the City’s permit renewal was within the regulatory requirements for the issuance of permits. There is evidence that the terms and conditions of the permit and the permitting process are in accordance with the Missouri Clean Water Law and its implementing regulations. There is no evidence that the permit was unlawfully issued.

DNR issued the final permit in accordance with the Missouri Clean Water Law.

Summary

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

SO RECOMMENDED on May 15, 2014.


SREENIVASA RAO DANDAMUDI
Commissioner

⁶ Tr. at 80.

⁷ Tr. at 91.

