

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Highway H)
Utilities, Inc. for a Certificate of Convenience and)
Necessity Authorizing It to Construct, Install, Own,)
Operate, Control, Manage, and Maintain a Water)
System for the Public in an Unincorporated Area)
of Pulaski County, Missouri)
)

File No. WA-2009-0316

In the Matter of the Application of Highway H)
Utilities, Inc. for a Certificate of Convenience and)
Necessity Authorizing It to Construct, Install, Own,)
Operate, Control, Manage, and Maintain a Sewer)
System for the Public in an Unincorporated Area)
of Pulaski County, Missouri)
)

File No. SA-2009-0317

SUPPLEMENT TO STAFF’S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through the undersigned counsel, and respectfully files this *Supplement To Staff’s Recommendation*, which was filed on May 15, 2009. For its *Supplement*, Staff respectfully states the following to the Missouri Public Service Commission (Commission):

Relevant Procedural History

1. On March 5, 2009, Highway H Utilities, Inc (HHU or Company) filed its *Application* with the Commission to provide water and sewer service in an expanded area of the Northern Heights Estates Subdivision in Pulaski County, Missouri.
2. On May 15, 2009, Staff filed its *Staff Recommendation*, recommending the Commission issue an order granting the Company a certificate of convenience and necessity (CCN) to provide water and sewer services in the proposed

service area, with the certificate to be effective the same date as the effective date of the Company's new or revised tariff sheets to be submitted.

3. As discussed in *Staff's Recommendation*, the Company has been working with the Missouri Department of Natural Resources (DNR) to determine the upgrades necessary for the existing water system, and the information and studies required by DNR to issue a permit for the construction of an additional sewage treatment facility. At the time of *Staff's Recommendation* sixty (60) customers in the proposed service area were receiving water and sewer service from the existing infrastructure.
4. Additionally, at the time of *Staff's Recommendation*, any specific action undertaken by DNR with respect to discharge violations and construction violations were uncertain.
5. On June 5, 2009, Staff received a copy of DNR's Notice of Violation (NOV) for HHU's wastewater treatment facility. The NOV is attached hereto, labeled as Attachment A.
6. Staff has contacted DNR, and has learned that the anti-degradation study conducted by DNR and HHU pursuant to 40 CFR § 131.12 and 10 CSR 20-7.031 (2) is underway, but the timeframe for completion is unknown at this time.
7. Staff is supplementing its recommendation with the NOV merely to complete the information provided for the Commission's consideration. The NOV does not change any provision in *Staff's Recommendation*, particularly that HHU

should be granted a CCN to provide water and sewer services in the proposed service area.

8. Staff understands the solution to the capacity issues provided in the NOV to be the building of the additional wastewater treatment facility. Staff is monitoring the progress of DNR's anti-degradation review. *Staff's Recommendation* includes a provision that the Company file a status report by August 1, 2009, indicating whether it has received the necessary permits. It remains Staff's recommendation that based upon the Company's progress at that time, Staff can make a more appropriate recommendation on the need of further updates and how frequently they should be submitted. Staff intends to make a recommendation after August 1, 2009, as to whether the Company should be required to file further status reports and at what frequency.

WHEREFORE, the Staff submits its *Supplement to Staff's Recommendation* and respectfully requests the Missouri Public Service Commission issue an order approving the recommendations and containing the conditions of the Staff's May 15, 2009 *Staff Recommendation*.

Respectfully submitted,

/s/Jennifer Hernandez

Jennifer Hernandez

Legal Counsel

Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, e-mailed or transmitted by facsimile to all counsel and parties of record this 18th day of June, 2009.

/s/ Jennifer Hernandez



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

DEPARTMENT OF NATURAL RESOURCES

June 2, 2009

www.dnr.mo.gov

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UTILITY OPERATIONS
DIVISION

Mr. Jerry Laughlin
4J Land and Cattle Company
PO Box 308
Waynesville, MO 65583-0308

RE: Missouri State Operating Permit # MO0130249; Northern Heights Estates Subdivision Wastewater Treatment Facility, Waynesville, Pulaski County

Dear Mr. Laughlin:

A representative of the Department's Southeast Regional Office's Rolla Satellite Office scheduled an environmental compliance inspection of the wastewater treatment facility that serves Northern Heights Estates Subdivision, Waynesville, Pulaski County. This environmental compliance inspection was conducted to ensure that you are properly maintaining your facility according to standards set by your Missouri State Operating Permit # MO0130249 and associated Missouri Clean Water Commission regulations. This inspection was conducted on May 13, 2009. Please direct your attention to the enclosed inspection report and checklist for further details.

At this time, your facility cannot be considered in compliance due to the continued inability of your wastewater treatment facility to consistently meet required permitted final effluent limitations as observed in discharge monitoring reports for calendar year 2008, first quarter of calendar year 2009, and samples taken during above referenced inspection. In addition you have expanded the collection system serving said wastewater treatment facility without applying for and receiving required construction permits from the Department. As a result, the Department is left no choice but to issue enclosed Notice of Violation (NOV) # 18593 SE and refer your facility to the Department's Division of Environmental Quality's Water Protection Program's Water Pollution Control Program's Compliance and Enforcement Section for further action.

Thank you for your cooperation during the aforementioned inspection. If you would like to discuss the results of said inspection and subsequent NOV issuance further, please contact Mr. Timothy W. Bull at (573) 368-7322 in the Department's Southeast Regional Office's Rolla Satellite Office, PO Box 250 (111 Fairgrounds Rd.), Rolla, MO 65402-0250.

Sincerely,

SOUTHEAST REGIONAL OFFICE

Gary L. Gaines, P.E.
Regional Director

GLG:tbp

Enclosures

- c: Ms. Catherine Hodges, Compliance and Enforcement Section, WPCB, WPP, DEQ
- Mr. Steve Loethen, Public Service Commission, PO Box 360, Jefferson City, MO 65102-0360
- Mr. James Merciel, Public Service Commission, PO Box 360, Jefferson City, MO 65102-0360
- William Earl Anderson, Jr., P.E., Managing Partner, Anderson and Associates Consulting Engineers, LLC, PO Box 806, Rolla, MO 65402-0806

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ATTACHMENT A

MISSOURI DEPARTMENT OF NATURAL RESOURCES
REPORT ON INSPECTION
Northern Heights Estates Subdivision WWTF
MISSOURI STATE OPERATING PERMIT # MO0130249
Waynesville, Pulaski County
June 2, 2009

INTRODUCTION:

On May 13, 2009, an environmental compliance inspection was conducted at the wastewater treatment facility (WWTF) that serves the Northern Heights Estates Subdivision, Waynesville, Pulaski County, by a representative of the Department's Southeast Regional Office's Rolla Satellite Office. The purpose of this environmental compliance inspection was to determine if facility was operating in accordance with the Missouri Clean Water Law, associated Missouri Clean Water Commission (MCWC) regulations and facility's Missouri State Operating Permit (MSOP) # MO0130249. Following is a detailed list of observations and recommendations noted at time of inspection:

PARTICIPANTS:

Mr. Jerry Laughlin, Owner, 4J Land and Cattle Company

Mr. Jay Laughlin, 4J Land and Cattle Company

Mr. Timothy W. Bull, Environmental Specialist, Department of Natural Resources, Southeast Regional Office's Rolla Satellite Office

DEFICIENCIES AND RECOMMENDATIONS:

1. Laboratory and Operational Control Testing. Currently subject WWTF conducts all testing and some operational duties via contracted operator/laboratory. Owner of subject WWTF was unsure of the frequency said contractor visits the WWTF to ensure proper function. Subject facility was informed that, at a minimum, the following operational control parameters **must** be conducted on a daily basis, per MCWC regulation [10 CSR 20-9.010(5)(B) and (C)], Treatment Plant Operations, Wastewater Treatment Systems Operation Scope Monitoring:
 - (a) Flow (Influent or Effluent).
 - (b) Weather conditions. This must include ambient air temperature and precipitation, if applicable.
 - (c) Chlorine. For facilities that chlorinate for disinfection purposes, total residual chlorine analysis of the effluent shall be performed on a daily basis when chlorination facilities are in use.

To ensure proper operation of subject WWTF, facility must begin daily monitoring requirements immediately. Inspector gave facility a blank copy of an operational control recording sheet. This sheet must be completed monthly and submitted to the Department quarterly with discharge monitoring reports.

2. Construction Permits. On June 17, 2004, the Department issued facility Construction Permit (CP) # SE-04-51 to install a recirculating sand filter, collection system and all appurtenances to make a complete and usable wastewater treatment system to serve one-hundred-seventeen (117) residential lots. On June 1, 2005, the Department received a one (1) calendar year extension request for said CP.

At the time of inspection, subject WWTF was receiving domestic sewage from nearly two-hundred (200) residences. These residences have been connected to the WWTF system without permittee submitting a sewer extension application(s) for approval, and without being issued a CP by the Department. This is a violation of MCWC regulation [10 CSR 20-6.010(4)(A)], Permits, Construction and Operation Permits, which states: "No person shall cause or permit the construction, installation or modification of any sewer system or of any waster contaminant source, point source or wastewater treatment facility without first receiving a construction permit issued by the department...".

3. ~~Grab samples were taken from Outfall #001 by inspector during inspection. Table below shows analytical results of those samples (shaded/bolded cells indicate a permitted final effluent limitation exceedance):~~

<u>Parameter</u>	<u>Weekly Average</u>	<u>Monthly Average</u>	<u>Analytical Results</u>
Biochemical Oxygen Demand-Five (5) day (BOD ₅)	15 mg/L	10 mg/L	56.3 mg/L
Total Suspended Solids (TSS)/ Non-Filterable Residues (NFRs)	20 mg/L	15 mg/L	26.00 mg/L
pH (6.0-9.0)			6.9 SU
Dissolved Oxygen			1.74 mg/L
Total Residual Chlorine	0.019 mg/L (0.13 ML)	0.010 mg/L (0.13 ML)	0.27 mg/L

Failure to meet above specified permitted final effluent limitations is a violation of Section A., Effluent Limitations and Monitoring Requirements, of facility's MSOP and MCWC regulation [10 CSR 20-7.015], Water Quality, Effluent Regulations.

A cursory review of subject facility's discharge monitoring reports show that subject WWTF has not been in compliance with permitted final effluent limitations since December 2007. The Department has sent facility two (2) Letters of Warning, each dated September 3, 2008 and November 12, 2008, for failure to meet permitted final effluent limitations for second and third reporting quarters of calendar year (CY) 2008, respectively. On February 24, 2009, the Department issued facility Notice of Violation #18540 SE for failure to meet final effluent limitations for the fourth reporting quarter of CY 2008. A summary of final effluent limitations exceedances shown in table below (shaded/bolded cells indicate exceedance):

Outfall	Monitoring Date	Parameter	Final Effluent Limitations	Reported Values
001	03/25/08	Fecal Coliform	400 colonies (daily avg.) 1,000 colonies (monthly max.)	1,200 colonies
001	06/10/08	BOD ₅	10 mg/L (weekly avg.) 15 mg/L (monthly max.)	21.5 mg/L
		Fecal Coliform	400 colonies (daily avg.) 1,000 colonies (monthly max.)	2,034 colonies
001	09/24/08	BOD ₅	10 mg/L (weekly avg.) 15 mg/L (monthly max.)	17.2 mg/L
		TSS	15 mg/L (weekly avg.) 20 mg/L (monthly max.)	23.8 mg/L
001	12/29/08	BOD ₅	10 mg/L (weekly avg.) 15 mg/L (monthly max.)	57.9 mg/L
		Fecal Coliform	400 colonies (daily avg.) 1,000 colonies (monthly max.)	9,265 colonies
001	03/10/09	BOD ₅	10 mg/L (weekly avg.) 15 mg/L (monthly max.)	71.8 mg/L
		TSS	15 mg/L (weekly avg.) 20 mg/L (monthly max.)	15.2 mg/L
		Fecal Coliform	400 colonies (daily avg.) 1,000 colonies (monthly max.)	6,462 colonies

With the additional residences that have been connected to the subject WWTF system, added, approximately sixty (60) homes as referenced in paragraph 2 above, this WWTF appears to be hydraulically overloaded and can no longer meet the required permitted final effluent limitations for which subject WWTF was originally designed. The Department highly recommends that subject facility not add any more residences onto this subject WWTF until such time as upgrades to the system can be completed.

4. Posting of Outfalls. Subject facility did not have outfall(s) posted as required by Section C., Special Conditions, Paragraph 2., of facility's MSOP. Please post a signage identifying said outfall as "Outfall # 001" as soon as possible.

COMMENTS:

1. Sludge Reporting. The Department received subject facility's annual sludge report for CY 2008 on February 2, 2009. Said report indicates that no sludge was hauled for said CY. Subject WWTF is designed around a Septic Tank Effluent Pump system which has a septic tank and effluent pump installed at each residence. As a result, there is little accumulation of solids at the treatment plant. However, over time, sludge can accumulate in subject facility's recirculation tank and said sludge may need to be disposed of properly.

Subject facility expressed interests in the ability to land apply bio-solids generated from the WWTF because of the beneficial soil amendment properties that are present. The Department allows and subject facility is able to land apply bio-solids per Section C., Special

Conditions, Paragraph 7., of facility's MSOP. Since facility has a design population equivalent greater than (>) one-hundred-fifty (150) persons, when biosolids are disposed of (land applied by facility operators), facility **must** conduct required metals testing, vector attraction, and pathogen reduction testing as required by the Federal 503 Sludge Regulations. If subject facility continues to use a contract hauler or transfers accumulated sludge to a separate permitted sludge disposal facility, only the quantity generated and information concerning said permitted entity receiving the sludge for final disposal needs to be documented, and subsequently submitted to the Department each CY.

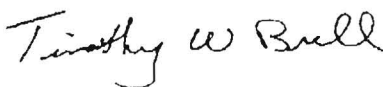
2. Northern Heights Estates Subdivision Phase II. On November 6, 2008, the Department's Southeast Regional Office's Rolla Satellite Office received an engineering report, prepared by Anderson and Associates Consulting Engineers, Inc., Rolla, dated October 2008, and a completed *Form B—Application for Construction or Operating Permit for Facility's Which Receive Primarily Domestic Waste*, for Northern Heights Estates II Subdivision. Per said engineering report, the proposed Phase II WWTF will be accepting sewage from one-hundred-thirty-three (133) new single family residences in addition to sixteen (16) single family residences from the existing Northern Heights Estates Subdivision Phase I.

From information received by the Department concerning the new development in the Northern Heights Estates Subdivision, it does not appear to the Department that there have been any efforts being made to upgrade the existing subject WWTF system. It appears that sixteen (16) residences from the existing Phase I development will be connected to the "new" proposed Phase II WWTF. However, this leaves approximately fifty (50) extra homes discharging to the existing subject WWTF. Because of this hydraulic overloading, subject facility may continue to be in violation of their MSOP's final effluent limitations and associated state regulations. The Department highly recommends that the subject existing Phase I WWTF be evaluated (using engineering report guidelines) based on existing loading rates, and that recommendations for necessary upgrades be submitted to the Department for review and approval to return facility to compliance as soon as possible.

CLOSING REMARKS:

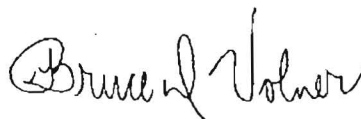
Due to facility's history of non-compliance and for violations observed during the subject environmental compliance inspection conducted on May 13, 2009, facility cannot be considered in compliance with their MSOP and associated state regulations. As a result, facility has been issued Notice of Violation # 18593 SE and has been referred to the Department's Division of Environmental Quality's Water Protection Program's Water Pollution Control Branch's Compliance and Enforcement Section for further action. The cooperation and assistance during the subject environmental compliance inspection was greatly appreciated.

SUBMITTED BY:



Timothy W. Bull
Environmental Specialist III
Rolla Satellite Office

APPROVED BY:



Bruce D. Volner
Environmental Engineer
Supervisor Rolla Satellite Office