



State of Louisiana

**OFFICE OF
STATE INSPECTOR GENERAL**

DEQ ENFORCEMENT
OF THE VILLAGE OF FOLSOM'S
SEWAGE TREATMENT PLANT

Report by

Inspector General Bill Lynch

Prepared for

Governor M. J. "Mike" Foster, Jr.

August 28, 2002

File No. 1-02-0025



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Inspector General Bill Lynch

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Approved by
Governor M.J. "Mike" Foster, Jr.

August 12, 2002

File No. 1-02-0025

DEQ Enforcement of the Village of Folsom's Sewage Treatment Plant

The Department of Environmental Quality, which is charged with protecting the state's waterways, failed to take timely action to halt pollution by the Village of Folsom in St. Tammany Parish. The improperly treated sewage flows across privately owned land and into downstream water bodies, including Lake Pontchartrain. Although the problem had been brought to DEQ's attention in 1998, it continues to the present day.

Prior to 1998, DEQ did not inspect the Folsom plant annually as required by state law. DEQ says it does not have the manpower to conduct annual inspections of minor facilities such as Folsom. DEQ issued a series of directives ordering Folsom officials to take corrective action following a March, 1998, inspection. However, Folsom has not complied with those directives and the problems continue.

It was not until three and a half years after the March, 1998, inspection that DEQ cracked down by levying a fine of \$466,450 in August, 2001.

The costs to correct the problems may be as much as \$1.8 million. Folsom has a population of 525.

The slow pace of enforcement actions by DEQ and lack of compliance by Folsom officials have resulted in a continuing environmental pollution problem that compelled the owners of the private property most affected to sue for relief. DEQ takes the position that it is not practical to issue a cease and desist order to municipal treatment plants, which would shut down the facility.

Background

The Village of Folsom built a sewage treatment plant in 1983 rated as capable of processing 64,000 gallons per day. The plant was upgraded in 1991 to process 100,000 gallons per day. The effluent from the plant travels through a ravine for about a mile

across three parcels of private property, to Morgan Branch stream, to the Bogue Falaya River, to the Tchefuncte River, and finally into Lake Pontchartrain.

DEQ is charged with regulation of the effluent from sewage treatment plants. The operating permit issued for the Folsom plant states the authorization to discharge does not relieve the village of liability for damages to private property. It also states that for discharges on private land the village should obtain approval from the landowner or appropriate easements and rights of way.

Folsom is required by its permit to submit discharge monitoring reports quarterly to DEQ. The reports are required to show the amount of flow through the plant, total suspended solids, fecal coliform bacteria count, acidity level (pH), and the biochemical oxygen demand. The state permit sets limits on these factors as a benchmark for how clean the wastewater should be leaving the plant. If the effluent exceeds permitted limits, Folsom is required to submit a report to DEQ listing those exceptions.

When a permitted facility violates state water control laws, DEQ has three enforcement options available to it short of going to court. DEQ may issue a compliance order, it may issue a fine, or it may issue a cease and desist order.

Under current regulations there are inherent limitations to DEQ's ability to obtain compliance of municipal sewage treatment plants with state law. According to Bruce Hammatt, then DEQ Administrator of Enforcement, a cease and desist order is not a practical option. In this case, issuing a cease and desist order would effectively prevent individual households from being able to flush their toilets. This leaves only two enforcement actions available to DEQ: a compliance order and/or a penalty assessment.

A History of Violations

Since beginning operation in 1983, the Folsom plant has had problems meeting the effluent limits of its permit. Between 1983 and 1993, Folsom was cited more than 60 times for violations of the water control laws. There was only one inspection between March, 1993, and March, 1998. Since 1998, the Folsom plant has been cited for more than 250 violations. The period covered in DEQ enforcement actions is from August, 1996 to August, 2001.

Folsom's Faults

Poor operation, poor maintenance and poor record keeping are among the problems at the sewage treatment plant for which the village is responsible. The plant appears to be deteriorating beyond usefulness quickly after less than 20 years of operation. A 25 year bond was issued to pay for the current plant.

Repairs and operational changes have been made over the years, but have failed to solve the problems. The Folsom plant has been cited for a lack of qualified operating staff and for being understaffed. Flow meters have not been calibrated frequently enough. The sand filter has been leaking and excessive sludge builds up in the drying beds from lack of service. The grease trap has clogged with an accumulation of septic solids due to lack of maintenance. Sample collecting procedures have been inadequate and holding times exceeded. Folsom has changed the operator in an attempt to improve operations. It has also repaired some of the other items and added a large grease trap into the system.

At present, the treatment plant is rusted and in general disrepair. The capacity of the plant is clearly not sufficient as indicated by the plant's total flow readings. While hoping to obtain grant funds to build a new facility rated at 200,000 gallons per day, Folsom officials are reluctant to seek a higher sewer fee.

Folsom's plant also is experiencing huge inflow and infiltration problems during periods of heavy rainfall due to water leaking into deteriorating sewer pipes. This hydraulic overloading pushes the volume of sewage to be processed beyond the design capacities of the plant. Folsom has unsuccessfully sought grants to pay the cost of fixing the problem.

As to record keeping, records and reports of effluent samples taken by Folsom for analysis at a private laboratory have been poorly handled. The village has often failed to insure that all necessary information was included on reports submitted to DEQ, it has submitted reports late, and sometimes failed to submit entire reports. Records would not be available for inspection because they would be kept with the operator in Hammond in violation of the permit. Folsom has changed operators and laboratories trying to solve these problems.

Untimely & Ineffective Enforcement Actions

Title 33 of the State Administrative Code states that any person may file an oral or written complaint of alleged violations. Furthermore, it states all complaints shall be investigated as expeditiously as possible. On three occasions DEQ failed to timely investigate a citizen's complaint.

On March 31, 1999, a citizen personally complained to then DEQ Assistant Secretary of Compliance Linda Levy about the Folsom sewage treatment plant improperly discharging sewage on his property. Ms. Levy directed the surveillance section to conduct a compliance sampling inspection at the plant in two or three weeks and to visit the complainant's property.

On April 12, 1999, the same citizen sent a letter to Ms. Levy reminding her of their meeting and reiterating his complaints. However, in both instances DEQ failed to log in the complaint on an incident report form and there is no evidence of an inspection of the plant or visit to the citizen's property to determine the severity of the pollution.

On June 1, 1999, the citizen wrote Ms. Levy complaining about the lack of response to the April 12 letter and sent lab results of a sewage sample taken showing a fecal coliform count higher than permitted limits. Again, DEQ failed to log in the complaint or investigate it at that time. DEQ finally inspected the plant on August 11, but there is no evidence samples were taken to determine if the plant was within compliance.

State law requires DEQ to inspect permitted facilities annually.

In the case of Folsom, during the five-year period from March, 1993, through Feb., 1998, there was only one inspection conducted by DEQ in May, 1996.

During a March, 1998, inspection serious problems were disclosed. However, it was not until October, 1998, a more than six month lapse, that a warning letter was issued to Folsom by DEQ.

DEQ chose a warning letter over a more stringent "notice of violation" in the belief that the less formal document would induce results more rapidly, rather than involve the time constraints imposed by a notice. However, the opposite occurred.

Three months later, in January, 1999, DEQ inspected the plant and again found problems. Another inspection was conducted seven months later, in August. At that time, it was

noted that conditions had improved, but numerous problems with records were found. The inspector also noted the discharge into the ravine crossing the complainant's property did not look bad at that time. Then, by November DEQ had completed a file review of the Folsom plant finding many more effluent and reporting violations.

DEQ listed those violations in a compliance order issued to Folsom in November, 1999, more than a year after the warning letter. The order gave the village 30 days to comply or provide a schedule for doing so. Folsom responded, asserting it had made repairs and changes. No evidence was found to show that DEQ verified Folsom's response or if the plant was in compliance.

It was not until May, 2000, that DEQ, which has the authority by law to levy civil fines, issued a notice of potential penalty to Folsom.

DEQ conducted three more inspections before actually assessing a \$466,450 penalty in August, 2001, which was 15 months after the notice of potential penalty was issued. State law allowed DEQ to assess the penalty 10 days after the notice was issued.

By way of explanation, Mr. Hammatt said that DEQ does not have the staff to monitor or inspect as much as called for. The department also faces a dilemma on what to do about non-compliance by municipalities such as Folsom, short of cutting off access to the plant, which DEQ does not see as a viable action.

DHH Oversight

The Department of Health and Hospitals also exercises oversight of sewage treatment plants. DHH primarily regulates the plants through approval of all new plant designs and improvements or modifications to existing plants. It checks the design plans for adequacy of capacity and ability to meet effluent standards written in the State Sanitary Code. DHH may also inspect sewage treatment plants for violations of the State Sanitary Code. DHH may levy penalties and seek injunctive relief for violations. Enforcement actions are directed by the DHH Public Health Officer.

DHH Chief Engineer Doug Vincent stated that most of the department's regulation is on the front end during the approval process. Once DEQ issues a discharge permit it has more enforcement capability. If DEQ is involved and has issued a compliance order then any other enforcement action by DHH would be redundant.

The DHH engineer in St. Tammany Parish has been reviewing the plans for a new plant at Folsom as well as modifications and repairs to the rest of the sewer system. He has made it known to DEQ and Folsom that the new plant alone will not solve the problem.

The DHH office in St. Tammany Parish has also received complaints of improper discharges at the Folsom sewage treatment plant. It has investigated those complaints and in one instance issued a letter informing the complainant of the health hazards to his children from improperly treated sewage. Another complaint resulted in an evaluation and recommendations to Folsom on how to improve conditions at its plant. The DHH engineer said that shutting down the plant is not a realistic option as sewage would soon be spilling out the manhole covers.

Current Status

Folsom has appealed the penalty levied by DEQ and an administrative hearing is to be held to discuss any mitigating factors.

The federal court lawsuit filed by the citizens was dismissed. They have appealed the dismissal of their federal suit and filed claims in state court.

During an April 9, 2001, meeting, the Folsom board of aldermen voted to reroute the effluent through enclosed piping down a highway right of way and away from the ravine on private property. Later, during the Oct. 8 meeting, after DEQ levied the \$466,450 penalty against Folsom, officials voted to hold up the award of a \$350,000 contract to install the pipeline. Officials claim they are in a Catch-22 situation: the village cannot pay the fine if it corrects this problem and it cannot correct the problem if it pays the fine.

Folsom has submitted a schedule to build a new sewage treatment plant and make system repairs to fix infiltration and inflow problems. This is expected to solve the ongoing pollution problems and therefore comply with DEQ regulations. Folsom has applied for grant funds to cover the more than \$1.5 million of estimated costs, but has not received a commitment at this date.

The current estimated cost to build a new plant is \$895,000. The estimate for the sewer line repairs is \$619,105. The cost of rerouting the effluent away from private property and down a highway right of way is estimated at \$350,000. Total costs for all of the projects could be more than \$1.8 million.

Folsom is still discharging improperly treated sewage onto the property of three families and into the Bogue Falaya River.

Mr. Hammatt said the village could be taking interim steps to correct problems at the facility while it seeks funds to build a new one. While he admits this would probably not bring the plant into full compliance, it would bring the amount of pollution discharged down significantly. Mr. Hammatt said he looks at such efforts as mitigating circumstances when bringing enforcement actions.

Chronology of Events

The following is a list of actions by the parties involved in the period under review.

1997

October - A citizen complained to Folsom officials, shortly after his family moved into the area, that the sewage plant was polluting their property. Folsom failed to remedy the problem.

1998

March 23 - DEQ conducted an inspection of the Folsom plant. The inspection report cited several problems including observation of solids downstream from the plant discharge point, secondary clarifiers were covered 90 percent by sludge and the discharge weir was scum coated and in need of cleaning. The report also cited poor housekeeping and record keeping.

October 12 - DEQ issued a warning letter to Folsom after a file review showed violations dating back two years. Folsom was cited for 43 effluent violations and 44 records/reporting violations.

1999

January 14 - Despite the warning notice, many problems and continuing discharge of polluting sewage were found in a new inspection by DEQ.

March 31 - A citizen complained to DEQ Assistant Secretary Linda Levy about the Folsom plant polluting his property and Folsom officials failing to do anything. DEQ failed to log in the complaint on an incident report. However, Ms. Levy forwarded the complaint to the surveillance unit the same day instructing them that a thorough investigation be conducted. There was no evidence Ms. Levy's instructions were acted on.

April 12 - The citizen reminded Ms. Levy by letter of their March 31 meeting and restated his complaint. Again, DEQ failed to log in the complaint and there was no record the complaint was investigated at that time.

June 1 - The citizen wrote another letter to Ms. Levy complaining about a lack of response to the April 12 letter and notifying DEQ about sewage samples he had sent to a lab that tested higher than permitted limits for fecal coliform. Again, DEQ failed to log in the complaint and there was no record of the complaint being investigated at that time.

August 11 - DEQ inspected the plant again and reported the operation and condition had improved but found problems with record keeping. The inspector held that the open discharge ravine crossing private property did not look bad at that time. There were no records indicating that samples were taken to show whether or not the plant was within permitted limits.

November 4 - DEQ issued a compliance order to Folsom ordering it to cease discharging inadequately treated sewage. The compliance order instructed Folsom to correct the problems within 30 days or submit a schedule for doing so. The compliance order cited 33 more effluent violations and 41 more records/reporting violations since issuance of the warning letter a year prior.

November 30 - The Folsom permit expired and DEQ allowed continued operation under the expired permit, which is permissible under the law.

December 2 - Folsom replied to the compliance order listing a series of actions it had taken to bring the facility into compliance, including employment of a fulltime operator. However, there are no records to indicate DEQ attempted to confirm whether the facility actually came into compliance.

2000

March 31 - After failing to obtain relief through DEQ enforcement, the citizens filed suit in federal court against the Village of Folsom and the U.S. Environmental Protection Agency claiming violation of the federal Clean Water Act.

May 3 - DEQ issued a notice of potential penalty to Folsom stating a fine may be levied for continued violations. The notice cited Folsom with 13 more effluent violations and 14 more records/reporting violations since the compliance order was issued six months prior.

October 3 - A new complaint was made by the citizen to DEQ that the Folsom sewage treatment plant was polluting his property. DEQ logged the complaint and investigated it nine days later.

October 13 - DEQ inspected the plant in response to the complaint and found the sewage plant was still polluting the complainant's property.

December 18 - DEQ met with Folsom officials and requested a schedule of repairs to be made or face a penalty.

2001

January 29 - DEQ inspected the Folsom sewage plant again and found it was still allowing improperly treated sewage to be discharged. The inspection report states "the facility is not in compliance with the compliance order."

February 6 – Citizens complained again to DEQ that sludge was being discharged from the plant into the open ravine that crosses their property.

February 6 - DEQ logged the complaint and inspected the plant the same day, taking samples that showed the plant was exceeding its discharge requirements.

August 20 - DEQ assessed a \$466,450 penalty against the Village of Folsom for continued violations of its permit.

September 13 - DEQ issued another compliance order and notice of potential penalty for violating the previous compliance order. The order cited Folsom for an additional 33 effluent violations and 27 records/reporting violations since the notice of potential penalty was issued 16 months prior.

November 14 – Federal court dismisses the lawsuit against the EPA and without action on any remaining state claims.

Conclusions:

1. DEQ did not bring timely enforcement actions against the Village of Folsom for discharges of improperly treated sewage.
2. Prior to March, 1998, DEQ failed to conduct annual inspections of the Folsom sewage treatment plant as required by state law.
3. The Village of Folsom has repeatedly exceeding its permitted effluent limits for more than five years since August, 1996 and failed to bring the operation of the sewage treatment plant into compliance with state regulations.

Recommendation:

1. DEQ should establish a system for prompt enforcement action against violating facilities not in compliance with state law.
2. DEQ should develop additional alternatives to bring minor municipal sewage treatment plants into compliance with state law.

Management Response:

A response from the Department of Environmental Quality is attached.

BL/VC/rp

File No. 1-02-0025



State of Louisiana
Department of Environmental Quality



J. "MIKE" FOSTER, JR.
GOVERNOR

J. DALE GIVENS
SECRETARY

February 11, 2002

Mr. Bill Lynch, State Inspector General
P.O. Box 94095
Baton Rouge, Louisiana 70804-9095

RE: File No. 1-02-0025

Dear Mr. Lynch:

Thank you for the opportunity to respond to your office's revised draft of the report titled "DEQ Enforcement of the Village of Folsom's Sewage Treatment Plant". I have attached several comments that respond to specific areas of the report. I would like to also reiterate some positive aspects of our compliance program that I shared with you in our previous response.

Despite enormous demands on our compliance staff, we responded to over 8,000 complaints and spills and conducted 9,500 facility inspections during the fiscal year ending July 2001. Additionally, 1,170 final enforcement actions were issued during this same timeframe. We have long known and shared with the legislature our inability to inspect every facility every year as required by statute. In the water program, we have committed to inspect all of our major facilities and 1/3 of our minor facilities yearly. The Village of Folsom is considered to be a minor facility by both the DEQ and the EPA based on its discharge flow rate.

The DEQ is continually striving to improve the way we operate and to be more effective in our compliance efforts. We acknowledge that although we have made great strides, there are still opportunities for improvement. We also acknowledge your recommendations in this report, specifically to bring enforcement actions in a more timely manner and to develop additional alternatives to bring minor municipal sewage treatment plants into compliance with state law. The issue of inadequate sewage treatment is a serious environmental issue facing both this state and the nation, and I would welcome any insight or suggestions that your office could provide in this area.

As to the Village of Folsom, I appreciate the fact that you have not lost sight in this report that it is ultimately the Village's responsibility to maintain compliance with its permit. It is very unfortunate that the Village of Folsom has continued to violate its permit and the regulations even after it has been warned several times by the DEQ. To date, the formal



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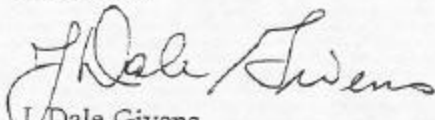


Mr. Bill Lynch
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orders and penalty issued by the DEQ have not convinced the Village to do what is required to come into compliance. The DEQ is committed to following through and doing all that is necessary to force the Village to achieve and maintain compliance with state laws and regulations. We are moving forward with an additional, more severe enforcement action that will address the Village's lack of progress in this area.

Again, I thank you for the opportunity to provide comments to this report. Please contact Mr. R. Bruce Hammatt, Assistant Secretary for the Office of Environmental Compliance at 765-0491 if you have any questions.

Sincerely,


J. Dale Givens
Secretary

Attachment

Attachment 1

DEQ Specific Responses to the Revised Draft Inspector General Report Regarding the Village of Folsom

STATEMENT: "There was only one inspection between March, 1993, and March, 1998."¹

RESPONSE: While this plant has not been inspected yearly, DEQ has met its stated operational plan goal of inspecting minor facilities once every three years. Our records show the following inspections were conducted at Folsom: 9/1/87, Compliance Evaluation Inspection (CEI); 7/5/90, Compliance Sampling Inspection (CSI); 3/3/91, CEI; 7/17/91, CEI; 3/29/93, CEI; 5/9/96, CEI; 3/23/98, CEI; 1/14/99, CSI; 8/11/99, CEI; 10/13/00, Complaint Investigation; 1/24/01, CSI; and 2/6/01, CSI.

CONCLUSION: "DEQ did not bring timely enforcement actions against the Village of Folsom for discharges of improperly treated sewage."

RESPONSE: While DEQ acknowledges that the response in this situation was not as rapid as we would like, the agency believes that there has been an appropriate progression of enforcement responses.

RECOMMENDATION: "DEQ should establish a system for prompt enforcement action against violating facilities not in compliance with state law."

RESPONSE: DEQ agrees that issuing enforcement actions in a more timely manner is desirable. We have recently instituted a procedure whereby a Warning Letter is issued to a facility within a few days from when a case referral has been made by our Surveillance Division to the Enforcement Division. However, to follow up with formal enforcement action requires a more in-depth technical and legal review of the action before it is issued, as specified in the Environmental Quality Act. We will continue to look for ways to streamline this process to enable us to react more quickly to instances of noncompliance.

RECOMMENDATION: "DEQ should develop additional alternatives to bring minor municipal sewage treatment plants into compliance with state law."

RESPONSE: DEQ does partner with the Louisiana Rural Water Association (LRWA) in bringing compliance assistance to small municipal systems. In fact, at our request the LRWA made several site visits to assist Folsom with the operation and maintenance of its STP. Because Folsom continues to show no progress in achieving compliance, DEQ is preparing to move forward with an additional, more severe enforcement action. Also, we would welcome any specific ideas you may have to assist us in our efforts at gaining compliance with the environmental laws by the State's cities, towns and villages.

¹ This same general statement appears in at least two locations in the report.