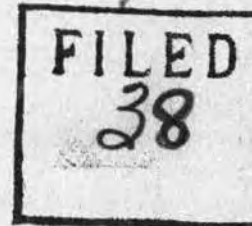


DIVISION OF HEALTH: The attached report and order in regard to hearing
REPORT AND ORDER: held in Eldon, Missouri on March 21, 1950,
by the Director of Public Health and Welfare and
the Director of Division of Public Health is here-
by approved as to form and legal content.

March 31, 1950

Dr. Buford G. Hamilton
Director, Division of Health
Jefferson City, Missouri

Dear Sir:



I.

This department received a request from Mr. L. E. Ordeltelheide, Director of the Bureau of Public Health/Engineering, to review the attached report and order of Mr. Samuel Marsh, Director, Department of Public Health and Welfare, and of Dr. Buford G. Hamilton, Director of the Division of Health.

II.

A full copy of said report and order in the matter of the adequacy and effectiveness of the existing sewage treatment plant, built in 1929, owned and operated by the City of Eldon, Missouri for treating the sewage wastes from said City is hereto attached and is considered a part of this opinion.

Section 37 of Article IV of the Constitution of Missouri, 1945, provides:

"The health and general welfare of the people are matters of primary public concern; and to secure them the general assembly shall establish a department of public health and welfare, and may grant power with respect thereto to counties, cities or other political subdivisions of the state."

Section 1, Laws 1945, page 945, provides, in part, as follows:

"There is hereby created and established as a department of state government a department of public health and welfare, which may hereafter be referred to as the department. The scope and purpose of the department of public health and welfare shall be to improve and protect the

Dr. Buford G. Hamilton

health of the people of the State of Missouri;
* * *

Section 5, Laws 1945, page 945, provides, in part,
as follows:

"The director of public health and welfare shall have power to make inquiries and investigations and to hold such hearings as may be necessary in pursuance of his duties, and for such purpose shall have authority to subpoena witnesses, administer oaths and provide for payment and expenses of witnesses."

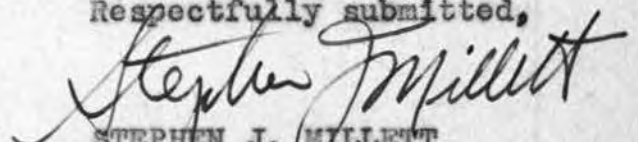
A full discussion of the cases relating to the power of the Division of Health to regulate sewage systems in this state and to prevent a municipality from creating a public nuisance is contained in an opinion of this department issued March 10, 1949, to William Lee Dodd, prosecuting attorney of Ripley county.

Therefore a further discussion of the powers and duties of the Division of Health and the Department of Public Health and Welfare is not necessary. It is clear that the Director of the Department of Public Health and Welfare has the power to make inquiries and to hold such a hearing as was held at Eldon, Missouri on March 21, 1950. It is also clear that it is the duty and responsibility of the Division of Health to safeguard the health of the people in the state and all its subdivisions and to make such orders as will prevent public nuisances that endanger the health of the people of this state. The report and order in regard to the hearing held at Eldon, Missouri on March 21, 1950, which is hereto attached has been reviewed by this department from the standpoint of form and legal content.

CONCLUSION

The attached report and order in regard to the hearing held in Eldon, Missouri on March 21, 1950, by the Director of the Department of Public Health and Welfare and the Director of the Division of Health is hereby approved as to form and legal content.

Respectfully submitted,


STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General


SJM:mw
Enc.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND WELFARE AND
THE DIVISION OF HEALTH OF THE STATE OF MISSOURI

In the matter of the adequacy and effectiveness of the existing sewage treatment plant, built in 1929, owned and operated by the City of Eldon, Missouri for treating the sewage wastes from said City. } Case No. 1

REPORT AND ORDER

This case is before the Department of Public Health and Welfare, represented by Samuel Marsh, Director, and the Division of Health of said Department, represented by Dr. Buford Hamilton, Director, as a result of repeated complaints from riparian owners living along and abutting Blythe's Creek into which the sewage from the City of Eldon is discharged after treatment, and below the point at which the sewage plant effluent is discharged into said stream.

A hearing was held in Eldon, Missouri, on March 21, 1950, at which time all interested parties were given an opportunity to be heard and the case has been reviewed on the record.

The evidence shows that studies were made of the operation of the Eldon sewage treatment plant and that said plant was found to be properly operated by the personnel but the plant is overloaded. The evidence further shows that the various units of the Eldon sewage treatment plant were, on the basis of present design standards in use by the Division of Health, overloaded, to the following extent: (1) Imhoff tank settling compartment--150%; (2) Imhoff tank sludge compartment--256%; (3) Dosing tank--satisfactory for existing filter; (4) Trickling filter--271%; (5) Sludge drying bed--392%; (6) Final settling tank--none provided.

The evidence further shows that the average bio-chemical oxygen demand of the plant effluent during a study made during the period August 22 to September 2, 1949, was 169 parts per million, excluding the first three days results, and that the average observed efficiency of the plant during the same period was 54.9%. Considering that the effluent from a well operated plant of this type should not exceed thirty parts per million of bio-chemical oxygen demand on the average and should operate at an efficiency of 90%, the polluttional material being discharged into Blythe's Creek appears excessive. This was further borne out by the bio-chemical oxygen demand of samples from Blythe's Creek collected at the same time from points 100 yards below the sewage treatment plant; about 3/4 miles below the sewage treatment plant; and about 1 1/2 miles below the sewage treatment plant. Although the recovery of Blythe's Creek from a heavily polluted condition was rapid as evidenced by an average B.O.D. from the three stations listed above of 130 p.p.m., 37 p.p.m., and 8 p.p.m. respectively, the testimony of those living near the creek below the plant shows that pollution conditions at times carry as far as Olean, Missouri, which is approximately six stream miles from the point at which the effluent of the Eldon plant discharges.

The evidence of riparian owners of land along Blythe's Creek about the odors from the Creek and the physical appearance of the Creek and its bed proves that serious pollution conditions exist; that the pollution conditions have grown worse in recent years; that such pollution conditions have resulted in the destruction of property values, the loss of the use of the stream by riparian owners and others, and severe and grievous public

nuisance conditions during periods when no surface runoff occurs to flush the stream. We find that the low dissolved oxygen content observed during the study of August 22 to September 2 unquestionably has resulted in the destruction of the fish and other aquatic life which existed in Blythe's Creek prior to the time pollution conditions developed.

We find there is no question but what there is the presence of disease producing microorganisms in Blythe's Creek below the sewage disposal plant, and the hazard thus created to those living near the stream or utilizing it in any manner is a public nuisance. We find that human fecal material is contained in the sewage; that the existing sewage treatment works of Eldon, Missouri are inadequate to provide a satisfactory degree of treatment; and that natural purification processes resulting in the destruction of harmful bacteria are not allowed sufficient time to operate at the said plant; and we further find that Blythe's Creek in its present condition constitutes a public nuisance and a potential and actual hazard to the public health of the people in this area. We find that flies, mosquitoes and other insects are capable of carrying disease producing microorganisms considerable distance from the source, and that they exist in Blythe's Creek. Therefore, the residents of the City of Eldon are themselves endangered by their own wastes.

The fact that no evidence was presented that the plant is adequate and that no pollution exists or has existed, although responsible city officials were present at the hearing, is likewise considered significant. Further, the evidence to the effect that the pollution might arise from or be greatly augmented by wastes from scattered septic tanks connected to

storm sewers or from scattered residences and business establishments either not connected to the Eldon sewerage system or located below the sewage treatment plant, must be discounted because of the magnitude of the pollution and the fact, brought out in the hearing, that the laboratory results do not indicate these factors to be of significance.

Having reviewed the evidence presented at the hearing, we find that the existing sewage treatment works at Eldon are inadequate and that as a result of their inadequacy, pollution conditions are created in Blythe's Creek below the point of discharge of the effluent from said plant, and that the same constitutes a public nuisance. We further find that these conditions are in violation of Sections 7 and 9 of Regulations of the Division of Health Governing the Installation, Extension and Operation of Public Sewerage Systems, which Sections 7 and 9 of Regulations of the Division of Health Governing the Installation, Extension and Operation of Public Sewerage Systems read as follows:

"Sec. 7. Disposal of Sewage — No sewage shall be placed or permitted to be placed or discharged or permitted to flow into any of the waters or upon any of the lands of the State in any manner determined by the Division of Health to be prejudicially affecting a public water supply or causing a nuisance.

"Sec. 9. Alterations or Changes in Operation Required. If, after investigation, the Division of Health finds that any sewerage system is in any way a menace to health on account of defective design, inadequacy, incompetent supervision or inefficient operation, or the sewage effluent is such as to cause other unsatisfactory conditions, such alterations and additions in the design or the construction or the equipment, or such changes in the operation of the plant as are necessary to produce satisfactory results shall be made in

accordance with recommendation of, and within the time limits set by, the Division of Health."

It is, therefore,

ORDERED: 1. That the City of Eldon construct and operate such additional sewage treatment facilities as may be needed to properly treat the sewage wastes from the City of Eldon and abate the pollution conditions and public health hazards which now exist in Blythe's Creek.

ORDERED: 2. That such works be constructed and placed in operation within a period of twelve months from the date of this order.

ORDERED: 3. That plans and specifications for such improvements be approved in writing by the Division of Health before any contract is let or construction work started.

ORDERED: 4. That this order shall take effect on this date and that certified copies of the order shall be served on proper officials of the City of Eldon.

Samuel Marsh, Director
Department of Public Health and Welfare

Buford G. Hamilton, M. D., Director
Division of Health

Dated this _____ day of _____,

1950 at Jefferson City, Missouri.