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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	DOCKET NO. CWA-07-2014-0002
MADRID, IOWA	)	
	)	COMPLAINT AND
Respondent	)	CONSENT AGREEMENT/
	)	FINAL ORDER
Proceedings under Section 309(g)	)	
of the Clean Water Act,	)	
33 U.S.C. § 1319(g)	)	
	)	

COMPLAINT

Jurisdiction

1. This Administrative Complaint ("Complaint") has been filed under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(g), and in accordance with, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint alleges that the Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

3. This action is simultaneously commenced and concluded pursuant to 40 C.F.R. Part 22, Sections 22.13(b) and 22.18(b)(2) (the Consolidated Rules of Practice).

4. This Consent Agreement and Final Order ("CA/FO") completely and finally settles all civil and administrative penalty claims and causes of action set forth below. Respondent neither admits nor denies the factual allegations or the violations alleged in this Complaint.

Parties

5. The Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA, Region 7, is the Director of Region 7's Water, Wetlands and Pesticides Division.

6. The City of Madrid, Iowa (hereafter "Respondent" or "the City"), is a political subdivision of the state of Iowa and a "municipality" within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

Statutory and Regulatory Framework of Section 301 of the CWA

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342.

8. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

9. Section 405(d)(1) of the Act, 33 U.S.C. § 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

10. Pursuant to Section 405(d)(1) of the Act, 33 U.S.C. § 1345(d)(1), EPA promulgated regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Part 503 (the "Sludge Management Program").

11. These regulations establish recordkeeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

12. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the EPA's implementing regulations, and a Memorandum of Understanding between the EPA and the IDNR. The EPA maintains concurrent enforcement authority of the CWA with approved state NPDES programs for violations of NPDES permits.

13. The Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all relevant times, Respondent has owned and operated the Madrid Waste Water Treatment Facility (hereafter "WWTF") and the associated sewer systems, which receive and treat wastewater from residential and commercial connections within Madrid, Iowa which together are a Publicly Owned Treatment Works ("POTW"), as defined by 40 C.F.R. § 403.3(q).

15. The POTW discharges into Murphy's Branch.

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16. Murphy's Branch is a "navigable water" of the United States as defined by Section 502 of the CWA, 33 U.S.C. § 1362.

17. Respondent's POTW is a "point source" that "discharges pollutants" into "navigable waters" of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C., § 1362.

18. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., and the City's discharge of pollutants from the POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Background

19. On June 11, 2001, the IDNR granted NPDES permit No. IA0028207 (hereafter "NPDES permit"), to the Respondent for discharges from Madrid's POTW into Murphy's Branch, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit has an expiration date of June 10, 2006, and has been administratively continued.

20. Respondent's NPDES permit sets effluent limitations and monitoring requirements at Outfall 001 for pollutants, including but not limited to, Five-day Carbonaceous Biological Oxygen Demand ("CBOD"), and Total Suspended Solids ("TSS"), and requires monitoring for these parameters as well as others at least once per week for CBOD and once per month for TSS. The NPDES permit also sets conditions restricting the amount of influent flow and requires daily monitoring.

21. On January 7 - 10, 2013, the EPA performed an inspection of the Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). At the conclusion of the inspection, the City was issued a Notice of Potential Violation ("NOPV") indicating that the inspection found that the City had violated provisions of the NPDES permit. A copy of the inspection report was sent to the IDNR and the City on or about March 21, 2013.

22. During the EPA Inspection, the inspector collected wastewater samples from the City, reviewed the City's records related to the NPDES permit, interviewed City personnel, and observed the POTW and the receiving stream to which it discharges.

Allegations

23. The facts stated in Paragraphs 11-22 above are herein incorporated.

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Count One

24. The City's NPDES permit authorizes the City to discharge from the wastewater treatment facility in accordance with the effluent limitations and monitoring requirements set forth in the permit. The City's NPDES permit contains effluent limitations for CBOD and TSS.

25. Based on the City's Discharge Monitoring Reports, the City violated the effluent limitations set forth in its NPDES Permit for CBOD5 on the following occasions: March 2009, April 2009, March 2010, April 2010, June 2010, August 2010, September 2010, May 2011, June 2011, September 2011, October 2011, April 2012, May 2012, July 2012, August 2012, September 2012, October 2012, November 2012, December 2012, April 2013, and May 2013.

26. Based on the City's Discharge Monitoring Reports, the City violated the effluent limitations set forth in its NPDES Permit for TSS on the following occasions: May 2009, November 2009, February 2010, April 2010, August 2010, September 2011, June 2012, August 2012, and November 2012.

27. Respondent's violations of the terms and conditions of its NPDES permit, as described above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

Count Two

28. Respondent's NPDES permit contains a condition that restricts the amount of wastewater influent that the WWTP has the capacity to treat. On a daily basis, Respondent must monitor its influent to ensure that it is not receiving more than 1.5360 million gallons per day (MGD) of influent on a daily basis and not more than an average of 0.635 MGD of influent per month.

29. Based on the City's Discharge Monitoring Reports, the City violated this condition on the following occasions: March 2009, April 2009, March 2010, April 2010, June 2010, August 2010, September 2010, May 2011, June 2011, April 2013, and May 2013.

30. Respondent's violations of the terms and conditions of its NPDES permit, as described above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

Count Three

31. 40 C.F.R. 503.17 requires the City to develop and retain records regarding the land application of sewage sludge, including but not limited to, the concentration of various pollutants in sewage sludge, a description of how pathogen and vector reduction requirements are met, and a description of sludge management practices.

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32. At the time of the EPA Inspection, the EPA inspector noted that the City did not retain any records regarding the land application of sewage sludge for 2011 and 2012.

33. Respondent's failure to retain sludge records, as described above, are violations of Sections 405(d)(1) of the CWA, 33 U.S.C. §§ 1345(d)(1), and implementing regulations.

Count Four

34. The Standard Conditions Section of Respondent's permit requires Respondent to maintain records of operation in accordance with Section 567-63.2 of Iowa's Administrative Code (IAC). Section 567-63.2 requires the permittee to "retain for a minimum of three years all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records."

35. At the time of the EPA Inspection, the EPA inspector noted the City did not retain pH calibatration records.

36. Respondent's violations of the terms and conditions of its NPDES permit, as described above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

37. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth below.

CONSENT AGREEMENT

38. Respondent admits the jurisdictional allegations of this Complaint and CA/FO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

39. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and CA/FO.

40. Respondent waives any right to contest the allegations and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

41. Respondent and Complainant each agree to resolve the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorneys' fees.

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42. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits, nor shall it be construed as a ruling on, or determination of, any issue related to any federal, state or local permit.

43. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty in the amount of $15,000 to be paid within thirty (30) days of the effective date of the Final Order.

44. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 43 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

45. The penalty payment made by Respondent pursuant to this Complaint and CA/FO is a civil penalty and shall not be deductable for purposes of federal taxes.

46. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and CA/FO and to execute and legally bind Respondent to it.

47. Payment of the entire penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violation. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

48. Respondent certifies by the signing of this CA/FO that the Respondent is presently in compliance with the requirements of Sections 301, 402, and 405 of the CWA, 33 U.S.C. §§ 1311, 1342, and 1345, and the Respondent's NPDES permit. The effect of the settlement described above is conditional upon the accuracy of this certification.

49. This Consent Agreement may be signed by the EPA and Respondent in part and counterpart.

50. Respondent agrees that the original CA/FO signed by Respondent shall be transmitted to Elizabeth Huston, Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Blvd., Lenexa, Kansas 66219. Upon the EPA's receipt of the signed original Complaint and CA/FO from Respondent, it shall be placed on public notice and, if no significant negative comments are received, submitted to the Regional Judicial Officer for review and entry.

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FINAL ORDER

Pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), it is hereby ORDERED that:

1. Respondent shall pay a civil penalty of $ 15,000 Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and CA/FO. Respondent shall pay the penalty by certified or cashier's check, annotated with the docket number and the name of the case, made payable to "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties - CFC
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. A copy of the check, clearly indicating the docket number and name of the case, shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Elizabeth Huston, CNSL
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

Parties Bound

4. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns.

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5. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

Reservation of Rights

6. The EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

7. With respect to matters not addressed in this Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Effective Date

8. This CA/FO shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

This executed Complaint and CA/FO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date	Karen A. Flournoy Director Water, Wetlands and Pesticides Division
Date	Elizabeth Huston Associate Regional Counsel Office of Regional Counsel

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FOR RESPONDENT:
MADRID, IOWA:

July 7, 2014
Date

Signature

Jeff Gibbons
Name

Mayor
Title

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IT IS SO ORDERED.

_____
Date

_____
Karina Borromeo
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, I hand-delivered the original of the foregoing Complaint and Consent Agreement/Final Order with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Consent Agreement/Final Order to:

Honorable Jeff Gibbons
Mayor, City of Madrid
304 South Water Street
Madrid, Iowa 50156

I further certify that on the date noted below I sent by first class mail a true and correct copy of the signed original Complaint and Consent Agreement/Final Order to:

Ted Peterson
Supervisor, Field Office #5
Iowa Department of Natural Resources
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309

Dennis Ostwinkle
Supervisor, Field Office #6
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353

_____ _____
Date Signature

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