

US EPA ARCHIVE DOCUMENT

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

IN THE MATTER OF) Docket No. CWA 07-2013-0027
)
City of Stockton, Missouri)
)
A Municipality)
) COMPLAINT AND 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 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).
2. This Complaint and Consent Agreement/Final Order (“CA/FO”) alleges that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

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

4. The City of Stockton, Missouri (hereafter "Respondent" or "City"), is a political subdivision of the State of Missouri and a "municipality" within the meaning of 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater.

Statutory and Regulatory Framework of Section 301 of the CWA

5. 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.

6. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. 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.

8. The Missouri Department of Natural Resources (“MDNR”) 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, implementing regulations, and a Memorandum of Understanding between EPA and MDNR dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

Factual Background

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

10. At all relevant times, Respondent has owned and operated a wastewater treatment facility (“WWTF”) and its associated sewer and stormwater collection and transmission systems, which receive and treat wastewater and stormwater runoff from residential, commercial, and industrial connections within the City of Stockton, Missouri.

11. The wastewater treatment facility described in Paragraphs 10 is a “point source” that “discharges pollutants” to Stockton Branch, which is a “navigable water,” all as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 et seq.

12. On May 13, 2008, NPDES Permit No. MO-0055280 was issued to Respondent by MDNR pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Respondent’s NPDES Permit, incorporates the October 1, 1980 Standard Conditions For NPDES Permits Issued By The Missouri Department of Natural Resources Missouri Clean Water, Part 1 – General Conditions (hereinafter “Standard Conditions, Part 1”).

13. Part I, Section A. of the Respondent's NPDES permit sets a Daily Maximum effluent limitation for fecal coliform, and requires monitoring for these parameters at least once per week during the recreation season from April 1 through October 31. The Daily Maximum effluent limitation for fecal coliform is 1000 colonies per 100 milliliters ("mL").

14. Part 1, Section A. of the Respondent's NPDES Permit incorporates into the NPDES Permit "as though fully set forth herein" the Standard Conditions, Part 1, dated October 1, 1980. The Standard Conditions, Part 1, includes the following requirements:

- A. Section A, Paragraph 6. Additional Monitoring by Permittee, "If the Permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Monitoring Report Form. Such increased frequency shall also be indicated."
- B. Section B, Paragraph 2. Noncompliance Notification, "If, for any reason, the permittee does not comply with or will be unable to comply with any daily maximum effluent limitation specified in this permit, the permittee shall provide the Department with the following information, in writing within five (5) days of becoming aware of such conditions: (i) a description of the discharge and cause of noncompliance, and (ii) the period of noncompliance"

15. On May 14-17, 2012, EPA performed an inspection of the Respondent's Publically Owned Treatment Works, including sampling, a facility walk-through, and review of the City's

self-monitoring records. EPA provided the report documenting the findings of the evaluation to MDNR and Stockton on or about July 26, 2012.

16. On September 21, 2012, EPA issued a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Stockton. The Request for Information requested Respondent's complete signed copy of Daily Monitoring Reports and its supporting laboratory reports for the months of August, September and October 2009, July 2011, and April, May, June and July 2012. On or about October 9, 2012, Stockton provided its response to the Request for Information.

17. The inspection and Request for Information described in Paragraphs 15 and 16 above, document that effluent samples were taken at the Wastewater Treatment Facility on July 6, 2011, analyzed for fecal coliform on July 7, 2011, and reported on July 5, 2011, (date assumed to be a typographical error) as 1,250 fecal colonies per 100 mL. The laboratory report dated July 5, 2011, revealed that the daily maximum effluent limitations for fecal coliform set forth in the Respondents NPDES Permit were exceeded by 125%.

18. The inspection and Request for Information described in Paragraphs 15 and 16 above, document that effluent samples were taken at the Wastewater Treatment Facility on July 19, 2011, analyzed for fecal coliform on July 20, 2011, and reported on July 25, 2011, as 1,210 fecal colonies per 100 mL. The laboratory report dated July 25, 2011, revealed that the daily maximum effluent limitations for fecal coliform set forth in the Respondents NPDES Permit were exceeded by 121%.

19. The inspection and Request for Information described in Paragraphs 15 and 16 above, identified violations of Stockton's NPDES permit, including the violations of the Standard Conditions, Part 1, requirements set forth in Paragraph 14 above. The noncompliance outlined in Paragraphs 17 and 18 above are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) are further outlined in Counts 1 and 2 below.

Allegations of Violation Of Section 301 Of The CWA

20. The facts stated in paragraphs 9 through 19 above are herein incorporated.

21. As described below in Counts 1 and 2, EPA's inspections and review of available information document that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. 1311(a), by violating the Standard Conditions, Part 1 of its NPDES permit.

Count 1- Failure to Report Additional Monitoring

22. Respondent is required pursuant to the Standard Conditions, Part 1, Section A, Paragraph 6 to report results of any additional monitoring in its Discharge Monitoring Reports.

23. In violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a), Respondent failed to submit the results of the additional monitoring for fecal coliform included in the July 5 and 25, 2011, laboratory reports in its Discharge Monitoring Reports.

Count 2 - Failure to Report Noncompliance

24. Respondent is required pursuant to the Standard Conditions, Part 1, Section B, Paragraph 2 to report any failure to comply with any daily maximum effluent limitation set forth in its NPDES Permit to the Missouri Department of Natural Resources within five (5) days of becoming aware of such noncompliance.

25. In violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a), Respondent failed to report to the Missouri Department of Natural Resources within five (5) days of becoming aware of its failure to comply with the fecal coliform daily maximum effluent limitations set forth in its NPDES Permit for the samples taken July 6 and 19, 2011.

CONSENT AGREEMENT

26. 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.

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

28. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

29. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action

30. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this Consent Agreement and Final Order. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

31. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. §1251 *et seq.*, and all regulations promulgated there under.

32. The effect of settlement described in Paragraph 30, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 31, above, of this Consent Agreement and Final Order.

33. The Final Order 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.

34. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

35. 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.

36. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty in the amount of Ten Thousand Eight Hundred Dollars (\$10,800) to be paid consistent with Paragraph 1 of the Final Order.

37. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 36 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.

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

39. Payment of the entire penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violation.

40. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This CA/FO may be executed by EPA upon receipt from Respondent of a signature page. Upon its execution, a copy of the executed agreement shall be sent by U.S. mail to Respondent.

41. Respondent agrees that the original CA/FO signed by Respondent shall be transmitted to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Upon the EPA's receipt of the signed original from Respondent, it shall be filed with the Regional Hearing Clerk.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay a civil penalty, for the violations cited herein, in the amount of Ten Thousand Eight Hundred

Dollars (\$10,800.00). An initial payment of Three Thousand Six Hundred Dollars (\$3,600.00) shall be paid on or before thirty (30) days of the effective date of this Final Order. The second and third succeeding payments of Three Thousand Six Hundred Dollars (\$3,600.00) each shall be due ninety (90) days and one hundred and eighty (180) days, respectively, of the effective date of this Final Order. Payment(s) shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket number CWA-07-2013-0027.

2. A copy of the each check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Melissa A.C. Bagley
Assistant Regional Counsel
United States 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.

Parties Bound

4. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

Reservation of Rights

5. 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.

6. With respect to matters not addressed in this Final Order, 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

7. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from the effective date unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region 7

Date

Melissa A.C. Bagley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

Date

FOR RESPONDENT:
CITY OF STOCKTON, MISSOURI:

Name

Date

Title

In the matter of:
City of Stockton, Missouri
EPA Docket No. CWA 07-2013-0027
Page 13 of 14

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of ___ 2013, 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; a true and correct copy of the same was sent by first class mail on the ___ day of _____ 2013, to City of Stockton, Missouri, 201 S. High Street, Stockton, Missouri 65785.

Name