

US EPA ARCHIVE DOCUMENT

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

**BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	)	
	)	
KIRKSVILLE, MISSOURI (THE CITY OF)	)	Docket No. CWA-07-2013-0036
	)	
Respondent	)	
	)	
NPDES Permit No. MO-0049506	)	
	)	
Proceedings under	)	COMPLAINT AND
Section 309(g) of the Clean Water Act,	)	CONSENT AGREEMENT/
33 U.S.C. § 1319(g)	)	FINAL ORDER
	)	
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**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the United States Environmental Protection Agency's (EPA's) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties 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 serves as notice that the EPA has reason to believe that Respondent violated Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311 and 1317, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

**Parties**

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Wetlands and Pesticides Division of EPA Region 7 (Complainant).

4. Respondent is the city of Kirksville, Missouri (hereafter, City or Respondent), a municipality organized under the laws of the state of Missouri and authorized to conduct business in the state of Missouri.

### **Statutory and Regulatory Framework**

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317 and 1342. Section 402 of the CWA 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. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into Publicly Owned Treatment Works (POTW), as defined at 40 C.F.R. § 403.3(k).

6. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES and Pretreatment programs in Missouri pursuant to Sections 402 and 307 of the CWA, 33 U.S.C. §§ 1342 and 1317, respectively, and applicable implementing regulations, including 40 C.F.R. Part 403. As such, the MDNR is the Pretreatment “Control Authority,” as defined by 40 C.F.R. § 403.3(f).

7. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

8. The City is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. The City owns and operates a POTW, as defined by 40 C.F.R. § 403.3(q), that receives and treats wastewater from various domestic, commercial and industrial sources.

10. The City’s POTW discharges to an unnamed tributary of Bear Creek, the to Bear Creek.

11. The POTW is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

12. The City’s discharge of pollutants from the POTW is subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

### **Factual Background**

13. On or about February 10, 2006, the MDNR issued NPDES permit number MO0049506 (hereafter “NPDES permit”) to the Respondent for discharges from the POTW to the unnamed tributary to Bear Creek, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit expired on February 9, 2011, but has been administratively extended by the MDNR.

14. Section C. Paragraph 7 of the City’s NPDES permit requires the City to, among other things, implement and enforce its Approved Pretreatment Program in accordance with the requirements of 40 C.F.R. Part 403.

15. Section 307 of the CWA, 33 U.S.C. § 1307, and regulations promulgated thereunder at 40 C.F.R. Part 403, require a POTW with an Approved Pretreatment Program to have adequate legal authority and procedures in place to implement the Pretreatment Program, including but not limited to:

a) 40 C.F.R. § 403.8(f)(1)(v) – adequate legal authority to carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users; and

b) 40 C.F.R. § 403.8(f)(2)(v) – procedures to inspect and sample the effluent of each Significant Industrial User at least once a year in order to identify occasional and continuous noncompliance by the Significant Industrial User.

16. Three Significant Industrial Users, as defined by 40 C.F.R. § 403.3(v), discharge to the City's POTW: Adair Foods, Northeast Regional Health Systems, and Kirksville College of Osteopathic Medicine.

17. On June 6 through 8, 2012, the EPA performed a Pretreatment Program Audit (Audit) of the City's Pretreatment Program implementation activities pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). A copy of the Audit report was sent to the MDNR and the City in August 2012.

18. During the Audit, the EPA auditor interviewed City Pretreatment personnel, reviewed documents, including the City's sewer use ordinance, Enforcement Response Plan, records maintained by the City regarding its implementation of the Pretreatment Program, and Biosolids Management Program.

19. On or about February 1, 2013, the EPA received a response from the City to a request for information (hereafter "EPA Information Request") issued by the EPA to the City on December 19, 2012, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

#### **Findings of Violation**

20. Based on observations documented during the EPA Audit and review of information provided by the City during the Audit and in response to the EPA Information Request, the EPA finds that the City violated the terms and conditions of its NPDES permit and Approved Pretreatment Program, by failing to inspect and sample the effluent from each Significant Industrial User at least once a year, as required by 40 C.F.R. § 403(f)(2)(v), as follows:

a) Respondent failed to inspect and sample the effluent of Adair Foods in 2011;

b) Respondent failed to inspect and sample the effluent of Northeast Regional Health Systems in 2011 and 2012; and

c) Respondent failed to inspect and sample the effluent of Kirksville College of Osteopathic Medicine in 2011 and 2012.

21. Respondent's violations identified in Paragraph 20 are violations of the requirement of NPDES Permit No. MO-0049506 to implement its Approved Pretreatment Program, and as such are violations of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d), and regulations promulgated thereunder at 40 C.F.R. Part 403.

22. 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 in Paragraph 23 below.

### **CONSENT AGREEMENT**

23. Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based on the nature of the violations and other relevant factors, the EPA has determined that an appropriate civil penalty to settle this action is **Seven Thousand Four Hundred Dollars (\$7,400)**.

24. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order and Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

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

26. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

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

28. Each Party to this Consent Agreement/Final Order agrees to resolve the matters set forth herein without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

29. Nothing contained in this Complaint and Consent Agreement/Final Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

30. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in 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 or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

31. Respondent consents that the civil penalty payment made pursuant to this Complaint and Consent Agreement/Final Order will not be deducted for purposes of federal taxes.

32. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

33. Respondent certifies by signing this Consent Agreement/Final Order that Respondent is presently in compliance with all requirements of the CWA and the Approved Pretreatment Program under its NPDES Permit.

34. The effect of settlement described in Paragraph 32 above is conditioned upon the accuracy of the Respondent's representations to the EPA, memorialized in Paragraph 33.

35. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

36. 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.

37. 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.

38. This Consent Agreement may be signed by the EPA and Respondent in part and counterpart. This Consent Agreement and Final Order may be executed by the EPA and submitted for issuance by the Regional Judicial Officer following receipt of the signature page from Respondent and conclusion of the public notice and comment period described in the paragraph above. Upon issuance, a copy of the executed agreement shall be sent by U.S. mail to Respondent.

**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Seven Thousand Four Hundred Dollars (\$7,400) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number and shall be made by certified or cashier's check made payable to "Treasurer, United States of America," and remitted to:

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

Copies of the check shall be mailed to:

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Patricia Gillispie Miller  
Senior Counsel  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

2. 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.

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

4. 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.

5. 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.

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

7. This executed Complaint and Consent Agreement/Final Order 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

\_\_\_\_\_  
Patricia Gillispie Miller  
Senior Counsel  
Office of Regional Counsel

FOR RESPONDENT:  
CITY OF KIRKSVILLE MISSOURI

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa, Kansas 66219. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

The Honorable Richard Detweiler, Mayor  
City Hall  
201 South Franklin  
Kirksville, Missouri 63501

Irene Crawford, Director  
Northeast Regional Office  
Missouri Department of Natural Resources  
1709 Prospect Drive  
Macon, Missouri 63552-2602

Paul Dickerson  
Compliance and Enforcement Office  
Water Protection Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102-0176

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Name