

US EPA ARCHIVE DOCUMENT

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
SIOUX CITY, IOWA (THE CITY OF)) DOCKET NO. CWA-07-2012-0016
)
Respondent)
) AMENDED CONSENT AGREEMENT/
) FINAL ORDER
Proceedings under)
Section 309(g) of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

INTRODUCTION

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. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of 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).

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

4. On September 17, 2012, a Complaint and Consent Agreement/Final Order was filed to resolve the above captioned matter. The Parties, having determined that implementation of the originally identified Supplemental Environmental Project ("SEP") was cost prohibitive, the Consent Agreement/Final Order is being amended to reflect a SEP that reaches the same or substantially similar environmental benefits has a SEP cost and value of equal or greater value than the original SEP.

AMENDED CONSENT AGREEMENT

5. Nothing contained in this Amended 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.

6. The following provisions of this Amended Consent Agreement shall replace Paragraphs 31 through 35 and Appendix A of the original Consent Agreement filed September 17, 2012. All other provisions of the original Consent Agreement shall remain the same.

31. In settlement of this matter, Respondent shall complete the following Supplemental Environmental Project (“SEP”), as amended, which the parties agree is intended to secure significant environmental or public health protection and improvements.

- a. Project Description: Respondent shall construct and thereafter maintain for no less than two years, a Bioswale measuring at least 3,000 square foot at West 18th and Center Streets in Sioux City, Iowa, for the purpose of treating urban stormwater runoff prior to its infiltration into the ground or flowing into Perry Creek. The project is identified as the Phase I Bioswale and further described in Appendix A of this Consent Agreement and Final Order;*
- b. SEP Cost: the total expenditure for the SEP shall be not less than \$32,000;*
- c. Completion Date: all work on the project shall be completed and the Bioswale will be placed into active service by no later than November 30, 2013, unless Respondent submits a written request with substantiation to the EPA by no later than October 31, 2013, for an extension of time to complete the SEP until the next planting/construction season. Such extension request shall specify a date for project completion by no later than two months into the estimated beginning date for the next planting/construction season.*

32. Within thirty (30) days of the SEP Completion Date, as identified in Paragraph 31.c. above, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below.

- a. The SEP Completion Report shall contain the following:*
 - (i) A detailed description of the SEP as implemented;*
 - (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks; and*
 - (iii) The following certification signed by Respondent or its authorized representative:*

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:*

*Robert Bryant
WWPD/WENF
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.*

- c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a, and b, above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 35 below.*

33. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

34. Respondent shall continuously maintain, use and/or operate the systems installed as the SEP for not less than two (2) year following its installation.

35. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-on Amount:

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 31 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP Cost described in Paragraph 31.b, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:*
- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$37,000;*
 - (ii) If the SEP is completed in accordance with Paragraph 31, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$5,000.*
 - (iii) Respondent shall not be liable for stipulated penalties if:*
 - (a) the SEP is not completed in accordance with Paragraph 31, but the Complainant determines that the Respondent: (1) made good faith and timely efforts to complete the project; and (2) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP; or*
 - (b) the SEP is completed in accordance with Paragraph 31, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project.*

- (iv) Respondent shall pay a stipulated penalty in the amount of \$100 for each day:*
- (a) it fails to submit the SEP Completion Report after the due date specified in Paragraph 32 above, until the report is submitted; and*
 - (b) it fails to submit any other report required by Paragraphs 31 or 32 above, after the report was originally due until the report is submitted.*

- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.*
- d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated in Paragraph 39, below. Method of payment shall be in accordance with the provisions of Paragraphs 1 and 2 of the Final Order, below.*

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

AMENDED FINAL ORDER

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

1. Respondent shall complete the Supplemental Environmental Project, as amended herein in accordance with the amended provisions for Paragraphs 31 through 35 and Appendix A set forth above in the Amended Consent Agreement for Paragraphs and shall be liable for any stipulated penalty for failure to complete such project as specified in the Amended Consent Agreement.
2. All other provisions of the original Complaint and Consent Agreement/Final Order not specifically addressed herein shall matter remaining the same.
3. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.
4. EPA reserves the right to enforce the terms of this Amended 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 Amended 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.
6. This Amended 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 Amended 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 SIOUX CITY, IOWA

Date

Signature

Name: _____

Title: _____

IT IS SO ORDERED.

Date

Karina Borrromeo
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 Boulevard, 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 Bob Scott, Mayor
City of Sioux City
PO Box 447
Sioux City, Iowa 51102

Dennis Ostwinkle, Supervisor
IDNR Field Office #6
1023 West Madison Street
Washington, Iowa 52353-1623

Ken Hassenius, Supervisor
IDNR Field Office #3
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301.

Dated this _____ day of _____, 2013.

Name

**IN THE MATTER OF THE CITY OF SIOUX CITY, IOWA.
AMENDED CONSENT AGREEMENT/FINAL ORDER
EPA DOCKET NO. CWA-07-2012-0016**

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Project Narrative – Bioswale Project at W 18th Street

The City of Sioux City has been charged with incorporating storm water quality improvements throughout the community. The Public Works Department has identified a couple of projects along the Perry Creek corridor and has moved forward with this project within the West 18th Street right-of-way at Center Street. Currently the stormwater in this basin travels along the paved streets and into the storm sewer system which dumps directly into Perry Creek.

The project provides two curb cuts in Center Street, upstream of the storm intakes, to allow the first 1.25 inches of a rain event to run through a bioswale. The first 1.25 inches of a rain event (covers approximately 90% of all rain events) generally flushes out and carries all of the oils, heavy metals, and other contamination found in the paved streets. The bioswale, with the soil mix, allows two items. The first item addressed is the improved quality of the water as the bioswale provides a grass and plant filtration of the stormwater as it travels through the system. The oils, heavy metals, and other contaminants are allowed to drop out of the stream as they are absorbed by the plants, grasses and soil mix. The second item addressed is the storm water quantity as the storm water is allowed to percolate or infiltrate through the soil mix. As these projects are put online and maintained the Perry Creek corridor should see less runoff into the channel during 90% of the yearly rain events. Larger storms will still be handled through the storm sewer system.

The proposed bioswale is five feet wide at the bottom and has 5:1 slopes up to existing ground. The bioswale runs at a 0.44% slope and meanders down to discharge at an existing area inlet at the toe of the levee. The bioswale will act as a filter strip for the stormwater particulates and has no impact to the existing levee. An optional two feet deep bioswale soil mix is designed to allow infiltration of runoff into the surrounding soils. The project will be seeded with native grasses and plants.

There is no adverse impact to the levee by the proposed project. Excavation along the levee is at least 15 feet away from the toe of slope. The stormwater on site currently sheet flows directly to an intake at the base of the levee. The bioswale will allow a longer travel length for the runoff and will flow into the same intake. The benefit to the Perry Creek will be a cleaner, cooler runoff stream for rain events 1.25 inches and smaller.

Sioux City Bioswale Schedule

- August 26, 2013-Council to Adopt the Documents
- September 9, 2013-Council to Approve the Documents
- September 23, 2013-Council to Award and Approve the Bid
- September 30, 2013-Proposed First day of construction project
- October 31, 2012-Project Completion Deadline per EPA

