

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Picerne Military Management, LLC)
Ft. Riley, Kansas.)
)
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

Docket No. CWA-07-2012-0021

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Picerne Military Management, LLC, (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

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 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.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

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

4. Respondent is Picerne Military Management, LLC, a foreign limited liability company authorized to conduct business in the State of Kansas.

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, Section 402 of the CWA, 33 U.S.C. § 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.

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. The Kansas Department of Health and the Environment (KDHE) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Factual Allegations

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

9. On December 20 and 21, 2011, Respondent, in response to a customer service complaint at Fort Riley, Kansas, pumped untreated domestic wastewater estimated to be between 5,000 and 9,000 gallons from a crawl space beneath a townhome unit into a storm drain inlet. Over a period of two days the untreated domestic sewage was pumped into and through the stormwater drainage system and discharged into a tributary of the Republic River.

10. The discharged untreated domestic sewage contained “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

11. The pump operated by Respondent to discharge the untreated domestic wastewater is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

12. Respondent did not have a NPDES permit authorizing the domestic sewage discharge.

13. Respondent discharged the untreated domestic sewage into a tributary of the Republican River which is a water of the United States and a “navigable water” as defined by CWA Section 502, 33 U.S.C § 1362.

Alleged Violations

14. The facts stated in paragraphs 8 through 13 above are herein incorporated.

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

16. On December 20 and 21, 2011, Respondent used a pump to discharge untreated sewage containing pollutants through a stormwater drainage system into a tributary of the Republican River, a water of the United States.

17. Respondent’s unauthorized discharges of pollutants to the Republican River and its tributaries are violations of Section 301.

CONSENT AGREEMENT

General Terms

18. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

19. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

20. Respondent neither admits nor denies the factual allegations and alleged violations contained in this Consent Agreement and Final Order.

21. 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.

22. 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.

23. 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.

24. 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.

25. The effect of settlement described in paragraph 23 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 24, above, of this Consent Agreement and Final Order.

26. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

27. EPA reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

28. 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.

29. 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.

Penalty

30. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in this Consent Agreement.

31. Respondent shall pay a civil penalty of Twenty-four Thousand, Nine-hundred dollars (\$24,900), within thirty (30) days of entry of the Final Order. Payment 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-07-2012-0021.

32. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

J. Daniel Breedlove
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

33. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

34. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

35. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

36. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen Flournoy
Director

J. Daniel Breedlove
Assistant Regional Counsel

FOR RESPONDENT:
Picerne Military Management, LLC

Date

Name (Print) _____

Title _____

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.

Robert Patrick
Regional Judicial Officer

Date