

US EPA ARCHIVE DOCUMENT

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. CWA-07-2013-0026
	)	
THE CITY OF ROCKAWAY BEACH	)	
MISSOURI	)	
	)	CONSENT AGREEMENT AND
Respondent,	)	FINAL ORDER
	)	
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency, Region 7 ("Complainant" or "EPA") and the City of Rockaway Beach, Missouri ("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 and Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. § 22.13(b), 40 C.F.R. § 22.18(b)(2), and in accordance with Subpart I of the Consolidated Rules (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act).

II. COMPLAINT

Jurisdiction

1. This Consent Agreement/Final Order ("CAFO") is being filed under the authority vested in the Administrator of 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 (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

2. This CAFO alleges that Respondent discharged pollutants into waters of the United States and otherwise failed to comply with its National Pollution Discharge Elimination System (“NPDES”) Permit, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Parties

3. Complainant is the Director of EPA Region 7’s Water, Wetlands and Pesticides Division who has been delegated the authority to enter into this CAFO from the Regional Administrator, EPA Region 7, who has been delegated the authority from the Administrator of EPA.

4. Respondent, the City of Rockaway Beach, Missouri, owns and operates a publicly owned treatment works (“POTW”). The POTW includes a wastewater treatment facility, located at 1000 Boys Camp Road in Rockaway Beach, Taney County, Missouri.

Statutory and Regulatory Framework

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. Section 402 provides that pollutants may be discharged only in accordance with the terms of a 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. Section 502 of the CWA states that “navigable waters” means the waters of the United States.

7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include, *inter alia*, sewage, garbage sewage, sludge, biological materials, and industrial wastewater discharged to water.

8. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362 (14) to include “any discernable, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

9. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams and tributaries thereto.

10. To implement Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R.

§ 122.1, a NPDES permit is required for any point source that discharges or proposes to discharge into waters of the United States.

11. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Factual Background

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

13. At all times relevant to this action, Respondent was the owner, operator, or the Permit holder for a POTW which includes a wastewater treatment plant (“WWTP”), located at 1000 Boys Camp Road in Rockaway Beach, Taney County, Missouri. The WWTP services Rockaway Beach, Merriam Woods, and Bull Creek in Taney County.

14. Respondent’s WWTP is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

15. Respondent’s WWTP causes the “discharge of pollutants” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

16. Respondent discharges pollutants into Lake Taneycomo. Lake Taneycomo is a “navigable water” as defined by Section 502(7) of the CWA.

17. Respondent’s discharge of pollutants from its WWTP requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

18. MDNR granted an NPDES Permit No. MO-01081624 to Respondent effective August 30, 2006, through August 29, 2011, for discharges from its WWTP into Lake Taneycomo. MDNR reissued the permit on September 30, 2011. The permit is effective until September 29, 2016.

19. Respondent’s NPDES permit includes, among other things, reporting requirements, sampling requirements, effluent limitations, and a compliance schedule.

20. Failure to comply with conditions of an NPDES permit is a violation of the CWA and its implementing regulations, 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.41(a).

21. On July 9, 2012, MDNR performed a Technical Assistance Visit to Respondent’s POTW. Based on information gathered through the inspection and records

maintained by MDNR, EPA determined that Respondent was in violation of its NPDES Permit by discharging phosphorus and ammonia into Lake Taneycomo at levels exceeding the effluent limits established under Respondent's NPDES Permit.

22. Between July 2008 and May 2012, Respondent exceeded its permitted effluent limit for phosphorus for sixteen (16) months. In addition, Respondent exceeded its permitted effluent limit for ammonia in June and October 2010.

23. By failing to comply with the effluent limits set forth in Respondent's NPDES Permit and exceeding its permit level for discharge of phosphorus and ammonia, Respondent violated the terms and conditions of its NPDES Permit, and as such, violated Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and the implementing regulations.

24. 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 Section III Paragraph 1 herein.

Consent Agreement

25. Respondent admits to the jurisdiction and neither admits nor denies the factual allegations set forth in this Complaint.

26. 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 CAFO.

27. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

28. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

29. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

30. This CAFO addresses all civil and administrative claims for the CWA violations identified in the Complaint. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

31. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, the EPA has determined that an appropriate civil

penalty to settle this action is Twenty-three Thousand Two Hundred Dollars (\$23,200) and Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twenty-three Thousand Two Hundred Dollars (\$23,200) plus interest, as set forth in Paragraph 1 of the Final Order (Section III herein).

32. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

III. FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-Three Thousand Two Hundred Dollars and No Cents (\$23,200.00) in four installments of \$5800.00 each with interest on the unpaid balance of the second, third, and fourth payments. The first payment of \$5800.00 shall be due within 30 days of the effective date of this CAFO; the second payment of \$5843.91 shall be due July 1, 2013; the third payment of \$5829.61 shall be due October 1, 2013; and the fourth payment of \$5814.78 shall be due December 1, 2013.

2. Interest on late payment 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 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.

3. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and 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-07-2013-0026.

Copies of the check shall be mailed to:

Audrey B. Asher
Senior Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

and to

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

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

5. This Final Order portion of this CAFO 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 CAFO.

General Provisions

6. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO 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.

7. Complainant 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 CAFO.

8. This 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION
AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Audrey B. Asher
Senior Counsel

RESPONDENT:
CITY OF ROCKAWAY BEACH, MISSOURI

Date

Name (Print)

Title

IT IS SO ORDERED.

This Final Order shall become effective upon date of signature of Regional Judicial Officer.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered the original and one true copy of this Consent Agreement and Final Order (CAFO) to the Regional Hearing Clerk, United States Environmental Protection Agency – Region 7, 11201 Renner Blvd., 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 CAFO to:

Dave Shorr, Esq.
Lathrop & Gage
314 E. High Street
Jefferson City, MO 65101

Date