

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

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 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 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.

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 Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES and Pretreatment programs in Iowa 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 IDNR 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 the Missouri River.

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 October 25, 2006, IDNR granted NPDES permit number IA0043095 (hereafter “NPDES permit”) to the Respondent for discharges from the POTW to the Missouri River subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit expired on October 24, 2011, but has been administratively extended by IDNR.

14. The City’s NPDES permit requires the City to, among other things, a) require all users of the POTW to comply with pretreatment requirements of Sections 204(b), 307 and 308 of the CWA, 33 U.S.C. §§ 1284(b), 1317 and 130, and b) implement its Pretreatment Program approved by IDNR on June 12, 1984, and any amendments thereto.

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, among other things:

- a. with regard to 40 C.F.R. § 403.5(c)(1), develop and effectively enforce specific limits to implement the prohibitions listed in 40 C.F.R. 403.5(a)(1) and (b);
- b. Pretreatment regulations at 40 C.F.R. § 403.5(b)(4) prohibit the introduction into a POTW any pollutant, including oxygen demanding pollutants, at a flow rate and/or pollutant concentration which will cause interference at a POTW;
- c. with regard to 40 C.F.R. § 403.8(f), at all times fully and effectively exercise and implement legal authority to:
 - (i) pursuant to § 403.5(f)(1)(iii), control through permit, order, or similar means, the contributions to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirement;
 - (ii) pursuant to § 403.5(f)(2)(vii), investigate instances of noncompliance with Pretreatment Standards and Requirements as indicated in reports and notices required to be submitted by Industrial Users pursuant to 40 C.F.R. § 403.12 or in analysis performed by the POTW;
 - (iii) pursuant to § 403.5(f)(2)(viii)(A), provide at least annual public notification in a newspaper of general circulation significant noncompliance (SNC) by Industrial Users at any time during the previous 12 months, including chronic violations of Industrial User wastewater discharge limitations (i.e., 66 percent or more of all compliance measurements of the same pollutant parameter during a 6-month period exceed the limitation); and
- d. with regard to 40 C.F.R. § 403.5(f)(5), develop and implement an enforcement response plan with detailed procedures to investigate and respond to instances of Industrial User noncompliance.

16. Respondent's approved Pretreatment Program includes, but is not limited to, an Enforcement Response Plan (ERP) approved by the IDNR in 1990 and legal authority to administer the program adopted as Sioux City Municipal Code Chapters 13.07 and 13.08 (Code).

17. On March 29 through 31, 2010, 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 IDNR and the City on or around July 22, 2010.

18. During the Audit, EPA auditor interviewed City Pretreatment personnel, reviewed documents, including the City's sewer use ordinance, ERP, records maintained by the City regarding it implementation of the Pretreatment Program, and Biosolids Management Program. The EPA auditor also performed a visual inspection of the City's Biosolids land application field.

19. On or about November 19, 2010, 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 October 5, 2010, 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 authorized Pretreatment Program, including, but not limited to, the following:

- a. Failing to develop local limits for Industrial Users in compliance with 40 C.F.R. § 403.5(c)(1) that implement 40 C.F.R. § 403.5(b)(4), by prohibiting the introduction into a POTW any pollutant, including oxygen demanding pollutants at a flow rate and/or pollutant concentration which will cause interference at a POTW. The City was unable to demonstrate that its allocation of oxygen demanding pollutants and total suspended solids to Industrial Users at the time of the Audit was calculated in a manner designed to protect the POTW from interference.
- b. Failing to control through permit, order, or similar means, the contributions to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements, as required by 40 C.F.R. § 403.8(f)(1)(iii). The City failed between approximately March 2, 2010, and August 16, 2010, to reissue Pretreatment permits to its seventeen Significant Industrial Users.
- c. Failing to investigate instances of noncompliance with Pretreatment Standards and Requirements by Industrial Users, as required by 40 C.F.R. § 403.8(f)(2)(vii), and to implement an ERP to respond to instances of Industrial User noncompliance, as required by 40 C.F.R. § 403.8(f)(5). The City failed to identify instances of SNC by Curley's Foods in 2008 and Mars Petcare in 2009 for monthly average violations of their permit limits, and to take appropriate enforcement actions, as set forth in its ERP, in response to such Industrial User SNC. At the initiation of the Audit, the City was not able to locate its ERP and needed to obtain a copy from IDNR.
- d. Failing to provide at least annual newspaper public notification of SNC by Industrial Users during the previous 12 months, as required by 40 C.F.R. § 403.8(f)(2)(viii)(A). The City failed to provide public notice regarding SNC by Curley's Foods in 2008 and by Mars Petcare in 2009, and included three Industrial Users that had been in SNC dating back to 2007 in its public notice for the year 2010, thus failing to provide adequate public notice and an effective opportunity for public participation.

21. Respondent's violations identified in Paragraph 20, subparagraphs a through d, above, are violations of the requirement of NPDES Permit No. IA0043095 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 Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, the EPA has determined that an appropriate civil penalty to settle this action is **Seventeen Thousand Five Hundred Dollars (\$17,500)**.

24. Respondent and 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 and to the performance of the Supplemental Environmental Project described below, which the parties agree is intended to secure significant environmental and/or public health benefits.

25. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest 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. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

29. 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.

30. Nothing contained in this Compliant 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.

31. In settlement of this matter, Respondent shall complete the following SEP, 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 Rain Garden measuring at least 13,000 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 Rain Garden 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 Rain Garden will be placed into active service by no later than November 30, 2012, unless Respondent submits a written request with substantiation to the EPA by no later than October 31, 2012, for an extension of time to complete the SEP until the next 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 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
901 North 5th Street
Kansas City, Kansas 66101.

- 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.

36. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certify / certifies that Respondent has have not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

37. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

38. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: *"This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."*

39. 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 Paragraph 35 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.

40. Respondent consent that neither the civil penalty payment made nor any costs or expenditures incurred by Respondent in performing the SEP pursuant to this Complaint and Consent Agreement/Final Order will be deducted for purposes of federal taxes.

41. 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.

42. The effect of settlement described in Paragraph 41 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in Paragraph 29.

43. 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.

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 Seventeen Thousand Five Hundred Dollars (\$17,500) 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
901 North 5th Street
Kansas City, Kansas 66101

and

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

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 shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

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

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.

7. 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.

8. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

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

Robert L. Patrick
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, 901 North Fifth Street, Kansas City, Kansas 66101. 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 Hessenius, Supervisor
IDNR Field Office #3
1900 North Grand Ave, Suite E17
Spencer, Iowa 51301.

Dated this _____ day of _____, 2012.

Name