

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
)
THE CITY OF FREDERICKTOWN,)
MISSOURI)
)
A municipality)
)
Respondent)
)
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
)

Docket No. CWA-07-2010-0093

CONSENT AGREEMENT/
FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and the City of Fredericktown, 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 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

COMPLAINT

Jurisdiction

1. This Consent Agreement/Final Order (CA/FO) 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 of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This CA/FO alleges that the Respondent discharged pollutants into the waters of the United States in violation of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. Respondent, the City of Fredericktown, Missouri (the City) owns an approximate four-acre area located east of Lincoln Drive and Saline Creek and approximately 114 linear feet of Saline Creek near Section 6, Township 33 north, Range 7 east, Madison County, Missouri.

Statutory and Regulatory Background

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 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

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.

Factual Background

The facts, as determined by Complainant, are as follows:

7. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the approximately four-acre property located east of Lincoln Drive and Saline Creek and approximately 114 linear feet of Saline Creek near Section 6, Township 33 north, Range 7 east, Madison County, Missouri (hereinafter "the Site").

9. In 2004 and 2005, Respondent met with the U.S. Army Corps of Engineers (Corps) to discuss the dredging and filling of wetlands at the Site. During those meetings, the Corps informed the City that it would need a CWA Section 404 permit to perform these activities. Again in 2008, the Corps informed a city alderman that Respondent was required to obtain a CWA Section 404 permit to dredge and fill the Site.

10. At some time in 2008, Respondent and/or persons acting on its behalf and using earth moving equipment, discharged dredged or fill material including, but not limited to, dirt, spoil, rock, and sand, into wetlands adjacent to Saline Creek while attempting to drain and fill the wetlands.

11. At some time in 2008, Respondent and/or persons acting on its behalf and using earth moving equipment, placed fill material in and around the stream bank of Saline Creek in an effort to stabilize the stream's bank.

12. On September 17, 2008, the Corps inspected the Site and documented the discharges of fill material described in Paragraph 10.

13. On March 17, 2009, officials from EPA and the Corps conducted a site visit at the Site and documented the discharge of fill material as described in Paragraph 11.

14. The discharge and disposal of dredged and/or fill material in and around Saline Creek has impacted approximately 114 linear feet of the creek and approximately four acres of adjacent wetlands.

15. The dredged and/or fill materials discharged by Respondent into Saline Creek and adjacent wetlands include, spoil, rock, sand, and dirt, which are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. The earth moving equipment referenced in Paragraphs 10 and 11 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The discharge of the dredged and/or fill material into Saline Creek and adjacent wetlands, described in Paragraphs 10 and 11 above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

18. Saline Creek and adjacent wetlands are "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

19. Respondent's discharge of pollutants from a point source into waters of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

FINDINGS OF VIOLATION

20. The facts stated in Paragraphs 7 through 19 above are herein incorporated.

21. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the performance of the work described herein, nor was the Respondent performing the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

22. Respondent's discharge and disposal of pollutants from a point source into waters of the United States, as described above, occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

23. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

24. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

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

26. Respondent and Complainant each agree to bear their own costs and attorney's fees.

27. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

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

29. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$40,149.92.

30. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

Reservation of Rights

31. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

32. With respect to matters not addressed in this CA/FO, 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 punitive damages.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of \$40,000, plus interest of \$149.92 over a period of one year, for a total payment of \$40,149.92. The total civil penalty of \$40,149.92 shall be paid in four installments. The first payment of \$10,037.48 is due within thirty (30) days of the effective date of this CA/FO. Respondent shall pay the second payment of \$10,037.48 no later than October 21, 2010. Respondent shall pay the third payment of \$10,037.48 no later than January 21, 2011. Respondent shall pay the fourth payment of \$10,037.48 no later than April 21, 2011. Payments of the penalty shall be by cashier or certified check made payable to "United States Treasury." The checks must include the docket number and the name of the case. The checks must be remitted to:

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

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

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.

Parties Bound

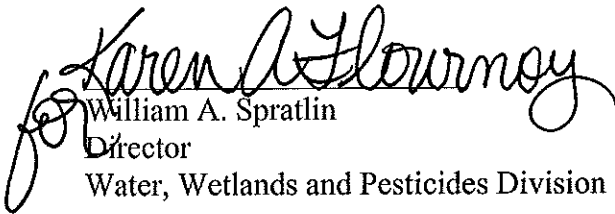
2. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

Effective Date

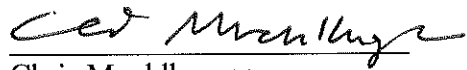
3. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

In the matter of:
The City of Fredericktown, Missouri
Docket No: CWA: 07-2010-0093

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division

7-12-10
Date


Chris Muehlberger
Assistant Regional Counsel

7.12.10
Date

In the matter of:
The City of Fredericktown, Missouri
Docket No: CWA: 07-2010-0093

RESPONDENT:
THE CITY OF FREDERICKTOWN, MISSOURI

May 25, 2010
Date

MARK TRIPP
Mayor Mark Tripp

In the matter of:
The City of Fredericktown, Missouri
Docket No: CWA: 07-2010-0093

IT IS SO ORDERED.

August 25, 2010
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF The City of Fredericktown, Missouri, Respondent
Docket No. CWA-07-2010-0093

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Christopher Muehlberger
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

The Honorable Danny Kemp
City of Fredericktown, Missouri
P.O. Box 549
124 West Main Street
Fredericktown, Missouri 63645

and

Kim R. Moore, Esq.
112 West Ste Maries, Suite 6
Perryville, Missouri 63775

Dated: 8/27/10


Kathy Robinson
Hearing Clerk, Region 7