

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

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

2012 MAY 14 PM 1:44

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
SIKESTON, MISSOURI (THE CITY OF)) Docket No. CWA-07-2012-0022
)
Respondent)
)
Proceeding under) COMPLAINT AND
Section 309(g) of the Clean Water Act,) CONSENT AGREEMENT/
33 U.S.C. § 1319(g)) FINAL ORDER
)
)

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 Section 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 the 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 Sikeston, Missouri (hereafter, City or Respondent), a municipality organized under the laws of the state of Missouri and authorized to conduct business in the State of Missouri.

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(q).

6. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES and Pretreatment programs in Missouri 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 MDNR is the Approval Authority for the Pretreatment Program in Missouri.

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 Publicly Owned Treatment Works (POTW) in Scott County, Missouri, that includes two wastewater treatment plants (“WWTP”) and a sewage collection system, which receives wastewater from various domestic and non-domestic sources. As defined by 40 C.F.R. § 403.3(q), POTW includes but is not limited to, devices and systems for the storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

10. The City’s POTW discharges to St. John’s Ditch and Ditch #4

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. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*

Factual Background

13. Respondent’s Pretreatment Program was approved by the MDNR on or about August 26, 1983. Respondent’s approved Pretreatment Program sets forth procedures for implementing requirements for regulating industrial discharges to Respondent’s POTW, specifically requirements set forth at 40 C.F.R. 403.8(f)(1) and (f)(2). The Enforcement Response Guidance and Sewer Use Ordinance are components of Respondent’s approved

pretreatment program. Respondent's Enforcement Response Guide was approved by the MDNR on or about January 21, 1992 and Respondent's Sewer Use Ordinance was approved by the MDNR or about December 11, 1991.

14. On or about April 4, 2008, Permit No. MO0035009 was issued to Respondent by the MDNR pursuant to Section 402 of the Act, 33 U.S.C. § 1342, authorizing discharges from the Sikeston WWTF into St. John's Ditch, a navigable water. The permit's Special Conditions required the city to implement its approved Pretreatment program and submit an annual report detailing Pretreatment implementation activities.

15. On or about November 14, 2008 NPDES Permit No. MO0035009 was reissued to Respondent by the MDNR pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The Permit contains a section entitled D. Special Conditions, paragraph 10 which requires the City to implement its approved Pretreatment program in accordance with the requirements of the General Pretreatment Regulations, 40 C.F.R. Part 403.

16. Permit number MO0035009 contains a requirement at D. Special Conditions, paragraph 11 to submit to the MDNR before March 31st of each year a Annual Pretreatment Report describing Pretreatment activities for the prior calendar year. The report is to contain an updated list of industrial users, a summary of the status of each industrial user, and a summary of compliance and enforcement activities, including inspections.

17. On or about October 24, 2008, the MDNR issued NPDES permit MO0120863 authorizing discharges from the Sikeston Business and Technology Park wastewater treatment plant. The Sikeston Business and Technology Park wastewater treatment plant discharges to Ditch #4.

18. On or about January 5th through 7th, 2010, the EPA performed a Pretreatment Program Audit of the City's pretreatment implementation activities. During the Audit, the EPA identified numerous program deficiencies. A report documenting the deficiencies was submitted to the MDNR and the City of Sikeston on or about March 5, 2010.

19. Following EPA's Audit and a review of the City's Annual Pretreatment Reports, on December 3, 2010, the EPA issued the City a Request for Information, pursuant to the authority of Section 308 of the Act. The EPA's review of the City's response, which was submitted on January 4, 2011, identified the extent of the City's Pretreatment Program deficiencies.

Findings of Violation

20. The facts stated in Paragraphs 5 through 19 above, are hereby incorporated by reference.

21. From the Pretreatment Audit and review of the City's submittal to the Section 308

Information request, the EPA has determined that the Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), by failing to implement Respondent's approved Pretreatment Program as required by the City's NPDES permit and the General Pretreatment Regulations of 40 C.F.R. Part 403. Respondent has failed to implement its Pretreatment Program in at least the following ways:

- a. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(i), "to identify and locate all possible industrial users which might be subject to the POTW Pretreatment Program." Unilever Ice Cream, USA, North Plant discharges well in excess of 5% of the hydraulic and organic loading to the Sikeston Business and Technology Park Lagoons (NPDES number MO0120863), and as such, is a Significant Industrial User (SIU) as defined by the General Pretreatment Regulations, 40 C.F.R. 403.2(v) and the City's Sewer Use Ordinance (SUO) at 13.16.20 paragraph 48. Respondent failed to identify Unilever Ice Cream, USA North Plant as a SIU subject to the POTW Pretreatment Program.
- b. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(1)(iii), to "[c]ontrol through permit, order, or similar means" the contribution of its Significant Industrial Users. The audit determined that the City's approved method for controlling contributions from SIUs is by permit and that Unilever Ice Cream, USA, North Plant had never been issued a discharge permit.
- c. Respondent failed, in violation of 40 C.F.R. § 403.8(f)(2)(vii) and its approved Enforcement Response Guide, to investigate instances of noncompliance with Pretreatment Standards and Requirements. Specifically, Respondent failed to determine if any of its Significant Industrial Users were in significant noncompliance as defined by 40 C.F.R. § 403.8(f)(vii)(A) through (G) and the City's Ordinance at 13.16.500. The EPA's audit found that all SIUs are in significant noncompliance for failing to sample and report to Respondent at least twice per year for all permitted pollutants.
- d. Respondent failed, in violation of its NPDES permit requirement at D. Special Conditions, paragraph 11, to update its list of industrial users as part of its annual report to the MDNR on Pretreatment implementation activities. Specifically, Respondent recognized Cott Beverages as a SIU as early as 2005, but did not include Cott Beverages in an annual report until the 2009 annual report was submitted to the MDNR on March 30, 2010.
- e. Respondent failed, in violation of its NPDES permit requirement at D. Special Conditions, paragraph 11, to provide a summary of the status of its industrial users in the annual report submitted to the MDNR. Specifically, Respondent failed to report in the years, 2005, 2006, 2007, and 2008, that all of its SIUs were in significant noncompliance for failing to sample and report at the frequency specified in their permits, as noted in paragraph c, above.

- f. Respondent failed, in violation of 40 C.F.R. Part 403.8(f)(2)(viii) and City Ordinance Chapter 13.16.500, to comply with the public participation requirements of 40 C.F.R. Part 25 by publishing an annual list of industries in Significant Noncompliance in a newspaper of general circulation that provides meaningful public notice. Specifically, Respondent failed to publish those SIUs in Significant Noncompliance for the years 2005, 2006, 2007, and 2008.
- g. Respondent failed, in violation of 40 C.F.R. Part 403.8(f)(3) to provide sufficient qualified personnel to carry out implementation of the Pretreatment program. Specifically, the EPA's audit found that the BMU personnel responsible for SIU inspections had insufficient knowledge of the Pretreatment program.
- h. Respondent failed, in violation of 40 C.F.R. Part 403.8(f)(2)(vii), and its approved Enforcement Response Guide, developed pursuant to 40 C.F.R. Part 403.8(f)(5), to investigate instances of noncompliance and take the appropriate enforcement. Specifically, Respondent took no enforcement for any violations committed by its SIUs from at least 2005 through 2009.

22. Respondent's violations identified in Paragraph 21, subparagraphs a through h, above, are violations of the requirement of its NPDES permit to implement Respondent's 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.

23. 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 32 below.

CONSENT AGREEMENT

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

25. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the 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. 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.

30. 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.

31. 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.

32. Respondent agrees to pay a mitigated civil penalty of Seventeen Thousand Dollars (\$17,000).

33. The effect of settlement described in Paragraph 29 above is conditioned upon the accuracy of the Respondent's representations to the EPA, memorialized in Paragraph 30.

34. 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 Dollars (\$17,000) 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

Kristen Nazar
Assistant Regional 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 and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

4. The 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.

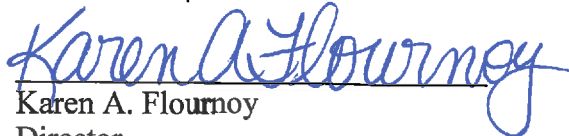
5. With respect to matters not addressed in this Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.


6. This 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 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


5-10-12
Date


Karen A. Flourney
Director
Water, Wetlands and Pesticides Division


Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

FOR RESPONDENT:
CITY OF SIKESTON, MISSOURI

3-23-12
Date



Signature

Name: Edward D Throop

Title: General Manager

IT IS SO ORDERED.

May 14, 2012
Date


Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Sikeston, Missouri (The City of), Respondent
Docket No. CWA-07-2012-0022

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
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:

Alan W. McSpadden, PE
Operations Manager
Sikeston Board of Municipal Utilities
138 N. Prairie St., PO Box 370
Sikeston, Missouri 63801

Dated: 5/14/12



Kathy Robinson
Hearing Clerk, Region 7