

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

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

City of Harrisonville)
Harrisonville, Missouri)

Respondent)

Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g) .)

CONSENT AGREEMENT/
FINAL ORDER

Docket No. CWA-07-2006-0056

CONSENT AGREEMENT/FINAL ORDER

I. JURISDICTION AND AUTHORITY TO ASSESS PENALTY

This administrative action is being conducted as authorized by Sections 309(g)(1) and 309(g)(2)(B) of the Clean Water Act (CWA), as amended, 33 U.S.C. § 1319(g)(1) and 309(g)(2)(B), and in accordance with the Consolidated Rules, 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), 64 Fed. Reg. 40181, 40183 (July 23, 1999), to be codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

City of Harrisonville
Consent Agreement/Final Order

This Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the facts and allegations set forth in this Consent Agreement/Final Order.

The United States Environmental Protection Agency, Region VII (EPA) and City of Harrisonville, Missouri (Respondent) have agreed to a settlement of this action before 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.

Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes an administrative civil penalty of not more than \$10,000 per day for violations of certain provisions of the CWA, including Section 301, 33 U.S.C. § 1311. This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$11,000 per day are now authorized for violations that occur after January 30, 1997. All alleged violations occurred after January 30, 1997.

Based upon the facts alleged in this Consent Agreement/Final Order and upon those factors which the Complainant must consider pursuant to Section 309(g)(3) of the CWA, 42 U.S.C. § 1319(g)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), for the alleged violations of the CWA contained in this Consent Agreement/Final Order.

The Complainant is the Director of the Water, Wetlands and Pesticides Division of the EPA, who has been duly delegated the authority to bring this action. The authority to execute this Consent Agreement/Final Order is provided to the Regional Administrators by EPA Delegation Nos. 2-52-A. The Regional Administrator has delegated this authority to the Director

II. STATUTORY AND REGULATORY FRAMEWORK

1. Respondent is a municipality in the state of Missouri and owns and operates a publicly owned wastewater treatment works (POTW) which receives and treats wastewater from various domestic and industrial sources.

2. Respondent is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2).

4. This Consent Agreement/Final Order ("CA/FO") serves as notice that EPA has reason to believe that Respondent violated the Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

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*, a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, 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 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(b) of the CWA, 33 U.S.C. § 1342(b), and implementing regulations. Authorized state programs must comply with minimum NPDES program requirements under 40 C.F.R. Part 123, which incorporates 40 C.F.R. Part 122 NPDES permit requirements. The EPA maintains concurrent

enforcement authority with authorized state NPDES programs for violations of the CWA pursuant to Sections 309(g) and 402(i) of the CWA, 33 U.S.C. § 1319(g) and 1342(i) .

7. The term “discharge of a pollutant” is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), in part, as any addition of any pollutant to navigable waters from any point source. The terms “pollutant,” “navigable water,” and “point source” are further defined in Section 502 of the CWA, 33 U.S.C. § 1362.

8. 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.

9. Pursuant to and to implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122 which set forth minimum requirements for NPDES permits. Further, EPA promulgated regulations codified at 40 C.F.R. Part 136 that set forth test procedures for quantitative and qualitative data to be submitted under NPDES permits.

10. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), provides that if EPA determines that any person has violated certain requirements of the CWA, including Section 301(a), EPA may, after consultation with the State in which the violation occurs, assess a civil penalty for such violation. The State of Missouri has been notified of this action in accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

11. In assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the provisions of Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), require that EPA must consider various factors, including the nature, extent and gravity of the violation, the degree of culpability, economic benefit or savings resulting from the violation, and such other factors as justice may require.

12. MDNR granted a NPDES permit, No. MO-0028070, (the "Permit" or "Respondent's Permit") to the Respondent, effective January 25, 2002 for discharges from its POTW into an unnamed tributary to Town Creek. The NPDES permit is in effect until January 24, 2007. Part I of the Standard Conditions of Respondent's Permit includes Section A which required that the date, exact place, and time of sampling as well as the identity of the individual who performed the sampling be recorded. Further, Part A, Effluent Limitations and Monitoring Requirements of Respondent's Permit required composite sampling for monitoring Biochemical Oxygen Demands, ("BOD") and Total Suspended Solids, ("TSS").

13. On August 13, 2004, EPA submitted an Information Request Letter under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to which Respondent responded to on October 12, 2004 ("Respondent's 308 Response").

14. On March 15, 2004, EPA performed an inspection of the Harrisonville wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspector's observations and sampling results of the wastestreams of the Respondent's POTW were included in the inspection report for the March 15, 2004 inspection.

15. Logs submitted that are identified as "Testing Data" in Attachment B to Respondent's 308 Response described in paragraph 13 above indicate Respondent did not record the date, exact place, and time of sampling nor identify the individual who performed the sampling for BOD and TSS for the months of July, 2001 through April, 2004 as required by the NPDES permit. Also, the same Logs indicate Respondent did not maintain required sampling and analysis records for pH for the months of July, 2001 through April, 2004, failed to perform certain weekly monitoring from December 13, 2001 to March 1, 2004, and failed to take composite samples from December 13, 2001 to March 1, 2004.

III. CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdiction of the EPA in this matter and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO set forth below.

2. Respondent neither admits nor denies the factual allegations set forth in the CA/FO and in the Inspection Report for the March 15, 2004 inspection.

3. Respondent agrees not to contest the terms and conditions set forth in this CA/FO in this or subsequent proceedings to enforce the terms of this CA/FO, and agrees not to appeal the Final Order set forth below.

4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the CA/FO.

5. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for settlement of the violations set forth in the CA/FO is Ten Thousand Dollars (\$10,000). Payment of this penalty shall satisfy all claims arising out of the facts alleged in the CA/FO, the facts alleged in the Inspection Report for the March 15, 2004 inspection and the information contained in the August 13, 2004 Information Request Letter and Respondent's October 12, 2004 Response.

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

7. Respondent consents to the issuance of Section IV (Final Order) hereinafter recited and consents to the payment of the civil penalty as set forth in the Section IV (Final Order).

8. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of the CA/FO may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.

9. Respondent and EPA each agree to bear their own costs and attorneys' fees.

10. Each signatory of this CA/FO certifies he or she is fully authorized to enter into the terms of the CA/FO.

11. Respondent certifies by the signing of this CA/FO that it is in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

IV. FINAL ORDER

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

1. Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000) to be paid within thirty (30) days of the filing of this fully executed CA/FO. Payments shall be by cashier's or certified check, made payable to "Treasurer, United States of America," and referencing EPA Docket No. CWA-07-2006-0056, and remitted to:

Mellon Bank
U.S. Environmental Protection Agency- Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

Copies of the check shall be mailed to:

Denise L. Roberts
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

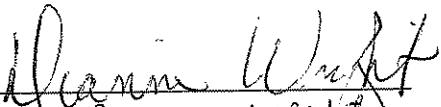
and

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

2. Compliance with the terms of this CA/FO satisfies all claims arising out of the facts alleged in the CA/FO, the facts alleged in the Inspection Report for the March 15, 2004 inspection, and the information contained in the August 13, 2004 Information Request Letter and Respondent's October 12, 2004 Response. This CA/FO shall terminate after satisfaction by Respondent of the requirements of this Final Order.

3. This executed CA/FO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

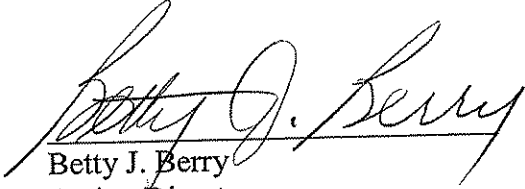
For the Respondent:


Name: Dianna Wright
Title: City Administrator
City of Harrisonville, MO

1-6-06
Date

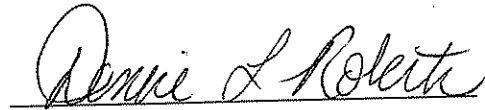
For the Complainant:

The United States Environmental Protection Agency



Betty J. Berry
Acting Director
Water, Wetlands and Pesticides Division

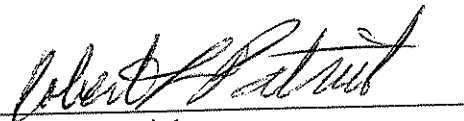
03/27/06
Date



Denise L. Roberts
Assistant Regional Counsel

3/27/06
Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.



Robert Patrick
Regional Judicial Officer

March 29, 2006
Date

IN THE MATTER OF City of Harrisonville, Respondent
Docket No. CWA-07-2006-0056

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:

Denise L. Roberts
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Terry Satterlee, Esq.
Lathrop & Gage
2345 Grand Blvd., Suite 2800
Kansas City, Missouri 64108-2684

Copy by First Class Mail to:


Kevin Mohammadi
Chief, Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

and

Karl Fett, Interim Director
Missouri Department of Natural Resources
Kansas City Regional Office
500 NE Colbern Road
Lee's Summit, Missouri 64086

3/29/06

Dated


Kathy Robinson
Regional Hearing Clerk