

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7

2017 MAR 20 AM 10:03

IN THE MATTER OF

Dr. Daniel J. McGowan.

Respondent

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Docket No. CWA-07-2014-0060

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), electronic/facsimile filing of page 5 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: March 20, 2017

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
)	CONSENT AGREEMENT AND
DR. DANIEL J. McGOWAN,)	FINAL ORDER
)	
Respondent)	
)	Docket No. CWA-07-2014-0060
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about March 6, 2014, 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), when the United States Environmental Protection Agency (Complainant or EPA) issued to Dr. Daniel J. McGowan (Respondent), an Amended Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with a violation of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and the regulations promulgated thereunder.

The Complaint proposed a civil penalty of \$177,500. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CA/FO) is the result of such negotiations.

CONSENT AGREEMENT

1. 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.
2. As this is a settlement, Respondent does not admit or deny any fact or liability with respect to the allegations contained in the Complaint referenced above.

3. Respondent consents to the issuance of the Final Order.
4. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.
5. Respondent waives any right to contest the allegations and any right to appeal the proposed Final Order accompanying this CA/FO.
6. Respondent and Complainant each agree to bear their own costs and attorney's fees.
7. 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.
8. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this CA/FO. Respondent reserves the right to defend against such actions on any basis in law or fact.
9. 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.
10. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of this 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.
11. Respondent agrees that a failure to submit the penalty payment by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.
12. The undersigned 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.

PENALTY

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

1. Respondent consents to the payment of a civil penalty of \$35,000. Payment is due within one hundred and eighty days (180) days of the effective date of this CA/FO.
2. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The checks must be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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


3. This CA/FO 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

4. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.


COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

3/1/17
Date



Karen A. Flourney
Director
Water, Wetlands and Pesticides Division

3.1.17
Date




Chris Muehlberger
Assistant Regional Counsel

RESPONDENT:

12/21/16

Date



Dr. Daniel J. McGowan

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Karina Borromeo, Regional Judicial Officer

March 20, 2017

Date

IN THE MATTER OF Dr. Daniel J. McGowan, Respondent
Docket No. CWA-07-2014-0060

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 emailed to Attorney for Complainant:

muehlberger.christopher@epa.gov

Copy emailed to Attorney for Respondent:

SDM@MattsonRicketts.com

Copy emailed to:

buschmann.margaret@epa.gov

biro.susan@epa.gov

almase.jennifer@epa.gov

angeles.mary@epa.gov

Dated: 3/20/17



Kathy Robinson
Hearing Clerk, Region 7