

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR



In the Matter of:)
)
The City of Blaine,) Docket No. CWA-05-2016-0019
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Introduction

1. On August 2, 2016, Complainant filed the Complaint for this civil administrative action against Respondent pursuant to Section 309(g) of the Clean Water Act, ("the Act"), 33 U.S.C. § 1319(g), and 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 at 40 C.F.R. Part 22.

2. On August 30, 2016, Respondent filed its Answer which either admitted or denied each factual allegation of the Complaint.

3. The parties agree to resolve the allegations of the Complaint without the adjudication of any issue of fact or law and that it is in their interest and the public interest.

4. The parties agree to the terms of this Consent Agreement and Final Order (CAFO) which includes the assessment of the civil penalty below.

Jurisdiction and Waiver of Hearing

5. Respondent stipulates that U.S. EPA has jurisdiction over the subject matter of this CAFO and waives any jurisdictional objections it may have.

6. Respondent waives its right to, and request for, a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest further the allegations of the Complaint, and its right to appeal this CAFO.

7. Section 309(g) of the Act, 33 U.S.C. § 1319(g), states that: “Whenever, on the basis of any information available the Administrator finds that any person has violated [section 301 of the Act, 33 U.S.C. § 1311], ... the Administrator ... may, after consultation with the State in which the violation occurs, assess a ... class II civil penalty under [section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B)].”

Statutory and Regulatory Background

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), states that “Except as in compliance with [section 404 of the CWA] the discharge of any pollutant by any person shall be unlawful.”

9. Section 404(a) of the Act, 33 U.S.C. § 1344(a), states: “The Secretary [of the Army] may issue permits ... for the discharge of dredged or fill material into the navigable waters at specified disposal sites.”

10. Section 502(5) of the Act defines a “person” as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

11. Section 502(12)(A) of the Act, 33 U.S.C. § 1362(12)(A), defines a “discharge of pollutants” as “ ... any addition of any pollutant to navigable waters from any point source.”

12. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” as

“ ... dredged spoil, solid waste, ... biological materials, ... rock, sand [or] agricultural waste discharged into water.”

13. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines a “point source” as “ . . . any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, ... [or] discrete fissure... from which pollutants are or may be discharged.

14. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines “navigable waters” as “ . . . the waters of the United States . . .”.

15. Federal regulations, at 40 C.F.R. § 232.2, define the term “waters of the United States” to include rivers, streams, and “wetlands.”

16. Federal regulations, at 40 C.F.R. § 230.3(t), define “wetlands” as “ . . . those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

17. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19, increased the statutory maximum penalty under section 309(g)(2)(B) of the Act, 42 U.S.C. § 1319(g)(2)(B), for violations occurring after December 6, 2013, from \$10,000 to \$16,000 per day of violation and from a \$125,000 to a \$187,500 maximum penalty.

Civil Penalty

18. The appropriate civil penalty for this action is \$20,000 pursuant to the facts alleged in the Complaint and the civil penalty factors at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

19. Within 30 days after the effective date of this CAFO, Respondent must pay the \$20,000.00 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the case caption and the docket number of this CAFO.

20. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kerryann Weaver (WW-16J)
Wetlands Enforcement Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jeffery Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

21. This civil penalty is not deductible for federal tax purposes.

22. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

23. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue.

General Provisions

24. This CAFO resolves Respondent's liability, and any liability of the Respondent's owners, parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for only federal civil penalties for the facts and violations alleged in the Complaint.

25. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

26. This CAFO does not affect Respondent's responsibility to comply with the Act or other applicable federal, state and local laws or regulations.

27. This CAFO is a “final order” for the allegations of the Complaint pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

28. The terms of this CAFO bind Respondent and Respondent’s owners, parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, successors and assigns.

29. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

30. Each party agrees to bear its own costs and fees, including attorneys’ fees, in this action.

31. This CAFO constitutes the entire agreement between the parties.

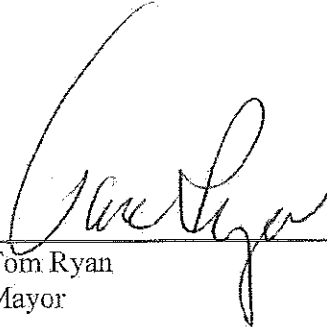
32. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, after having been signed by the Regional Judicial Officer and subject to the requirements of section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

33. Complainant is providing public notice of and reasonable opportunity to comment on the proposed issuance of the CAFO according to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4).

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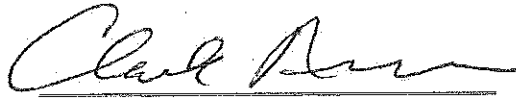
The City of Blaine, Respondent

March 2, 2017
Date



Tom Ryan
Mayor


March 2, 2017
Date



Clark Arneson
Manager

Region 5, U.S. Environmental Protection Agency, Complainant

3/8/17
Date



Christopher Korleski
Director, Water Division
U.S. Environmental Protection Agency
Region 5

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
Region 5
United States Environmental Protection Agency