

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

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ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2015 JAN 26 PM 2:51

IN THE MATTER OF:)
)
RAYMORE, MISSOURI (THE CITY OF))
)
)
Respondent.)
_____)

Docket No. CWA-07-2014-0093

ORDER TO SUPPLEMENT THE RECORD

In the Consent Agreement and Final Order currently before the undersigned, both Complainant and Respondent agree that, in addition to the payment of a civil monetary penalty for violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, respectively, the Respondent will perform the following Supplemental Environmental Project (“SEP”):

Respondent shall construct and thereafter maintain for no less than two years, two Rain Gardens along the Eagle Glenn Trail in Raymore, Missouri, each with a bio retention mix that is 18 inches deep and 450 square feet of planting area. The Rain Gardens will be designed for the purpose of reducing erosion and pollutants from pets, as well as to capture and filter first flush runoff from adjacent roadways prior to its discharge into a tributary of the South Grand River. The total retention capability of the Rain Gardens is expected to be approximately 7875 cubic feet of water in a 24-hour period. The project is further described in Appendix A of this Consent Agreement and Final Order. *See* Paragraph 92.a. of Consent Agreement.

In addition, the Consent Agreement states that:

All work on the project except final plantings shall be completed by no later than *December 1, 2014* [emphasis added], unless Respondent submits a written request with substantiation to the EPA by no later than November 1, 2014, for an extension of time to complete the SEP until the next construction season. Such extension request shall specify a date for project completion by no later than two months into the estimated beginning date for the next construction season. All plantings will be installed and the Rain Gardens will be placed into active service by no later than May 31, 2015. *See* Paragraph 92.c. of Consent Agreement.

According to the Agency’s SEP Policy (1998 SEP Policy), SEPs are defined as environmentally beneficial projects which a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform. “In settlement of an enforcement action” means: 1) EPA has the opportunity


to help shape the scope of the project before it is implemented; and 2) the project is not commenced until after the Agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).” See SEP Policy at Section B. A footnote in the Policy states as follows:

Since the primary purpose of this Policy is to obtain environmental or public health benefits that may not have occurred “but for” the settlement, projects which the defendant has previously committed to perform or have been started before the Agency has identified a violation are not eligible as SEPs. Projects which have been committed to or started before the identification of a violation may mitigate the penalty in other ways. Depending on the specifics, if a regulated entity had initiated environmentally beneficial projects before the enforcement process commenced, the initial penalty calculation could be lower due to the absence of recalcitrance, no history of other violations, good faith efforts, less severity of the violations, or a shorter duration of the violations. *Id.* at n.2.

It is not clear from the record when the Agency identified the violation(s) and when Respondent committed to perform or started the SEP. Pursuant to the SEP Policy, in order for a project to be eligible as a SEP, the defendant/respondent cannot commit to perform or have started a project prior to the Agency identifying a violation(s).

Therefore, pursuant to 40 C.F.R. § 22.4(c), I am directing the parties to address how the proposed SEP as outlined above conforms to the Agency’s SEP Policy and how it is eligible as a SEP, specifically addressing the following: 1) when the Agency identified the violation(s); 2) when Respondent committed to perform or started the SEP; and 3) whether the SEP has been completed or an extension of time was requested and approved. A written memorandum shall be filed in compliance with this Order no later than February 9, 2015.

SO ORDERED THIS 26th DAY OF January, 2015.


Karina Borromeo
Presiding Officer

IN THE MATTER OF Raymore, Missouri (The City of), Respondent
Docket No. CWA-07-2014-0093

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 by email to Attorney for Complainant:

millier.patriciag@epa.gov

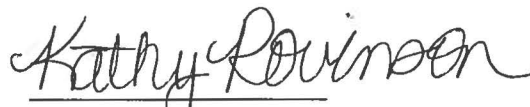
Copy by First Class Mail to:

The Honorable Peter Kerckhoff, Mayor
City of Raymore
100 Municipal Circle
Raymore, Missouri 64083

Paul Dickerson, Chief
Enforcement Section
Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Andrea Collier, Director
Kansas City Regional Office
Missouri Department of Natural Resources
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710

Dated: 1/26/15



Kathy Robinson
Hearing Clerk, Region 7