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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Weston, Missouri (The City of)) Docket No. CWA-07-2014-0100
)
Respondent)
)
Proceedings 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. Complainant, the United States Environmental Protection Agency, Region 7 ("EPA") and Respondent, the city of Weston, Missouri, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of 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 Water, Wetlands and Pesticides Division of EPA Region 7 ("Complainant").

5. Respondent is the city of Weston, 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

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

8. The Missouri Department of Natural Resources ("MDNR") is the agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

EPA's General Allegations

9. The City is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources. The POTW includes a wastewater collection system, various pump stations and a four-cell wastewater treatment lagoon consisting of two aerated cells operated in series followed by two facultative cells operated in series, which is located on Kirk Road in Weston, Missouri 64098.

11. The City's POTW discharges to the Missouri River, which is a "navigable water" as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

12. The City's POTW is a "point source" that "discharges pollutants" into "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

13. The City's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

14. The MDNR issued NPDES Permit No. MO-0031585 to the City for discharges from its POTW to the Missouri River. The permit became effective October 23, 2009 with an expiration date of October 22, 2014.

15. On November 5-8, 2013, an EPA representative performed a Compliance Sampling Inspection (hereafter "EPA inspection") of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its NPDES permit and the CWA.

16. During the EPA inspection, the inspector collected wastewater samples from Outfall 001, reviewed the City's records related to the NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations regarding the City's POTW for the period from 2009 through the date of the EPA inspection included, but were not limited to:

- a. Discharges of effluent in violation of its NPDES permit limitations on numerous occasions;
- b. Numerous gaps and omissions in monitoring and reporting, including failure to properly measure and report influent and effluent flows on numerous occasions;
- c. Failure to properly complete numerous Monthly Monitoring Reports ("MMRs") and failure to submit some MMRs; and
- d. Failure to maintain monitoring information and records for the period of time required by the NPDES permit.

17. During the EPA inspection, the City informed the inspector that a gap in MMR reporting from July 1 through November 30, 2011 was due to flooding from the Missouri River and that during this time the lagoon and effluent lift station were submerged.

18. By letter dated March 27, 2014, the EPA sent to the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, which the City received on or about March 31, 2014..

19. By letter dated April 14, 2014, the City responded to EPA's Request for Information. The City's response included, among other information, an explanation of repairs to the wastewater treatment plant following the 2011 flood

EPA's Specific Allegations

20. The facts stated in Paragraphs 1 through 19, above, are herein incorporated.

Count 1

Failure to Comply with Influent Monitoring Requirements

21. The Influent Monitoring Requirements section of the City's NPDES permit establishes monitoring requirements for Influent, including the following:

- a. Five-Day Biochemical Oxygen Demand ("BOD₅") – once per quarter in the months of March, June, September, and December; and
- b. Total Suspended Solids ("TSS") – once per quarter in the months of March, June, September, and December.

22. The EPA inspection, review of the City's MMRs and review of the City's response to the Request for Information revealed that, excluding the period from July 2011 through June 2012 when the City indicated its wastewater treatment plant was flooded and subsequent repairs were being made, the City failed to monitor for and report influent BOD₅ and TSS in December 2009, March, June and September 2010, June 2011, and September 2012.

23. The City's failure to comply with the influent monitoring requirements of its NPDES permit, as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2

Failure to Comply with Effluent Monitoring Requirements

24. The Effluent Limitations and Monitoring Requirements section of the City's NPDES permit establishes effluent monitoring requirements for Outfall 001, including the following:

- a. Flow – 24 hour total once per day;
- b. BOD₅ – 24 hour composite once per month;
- c. TSS – 24 hour composite once per month;
- d. pH – grab sample once per month;
- e. Ammonia as N – grab sample once per month;
- f. Temperature – grab sample once per month;

- g. Oil & Grease (“O&G”) – grab sample once per month; and
- h. Fecal Coliform – grab sample once per month from April 1st through October 31st.

25. The EPA inspection, review of the City’s MMRs and review of the City’s response to the Request for Information revealed that since October 2009, excluding the period from July 2011 through June 2012 when the City indicated its wastewater treatment plant was flooded and subsequent repairs were being made, the City violated the effluent monitoring requirements of its NPDES permit, as follows:

- a. The City reported incorrect values for effluent flow on numerous days between October 2009 and March 2014;
- b. The City failed to monitor and report effluent flow on numerous days between October 2009 and March 2014;
- c. The City failed to monitor and report effluent BOD₅ concentrations in June and October 2010 and June 2011;
- d. The City failed to monitor and report effluent TSS concentrations in June and October 2010 and June 2011;
- e. The City failed to monitor and report effluent pH values in September 2013;
- f. The City failed to monitor and report O&G concentration in the effluent in October, November and December 2009, June and October 2010, June 2011, and June 2013; and
- g. The City failed to monitor and report Fecal Coliform concentrations in the effluent in April and June through September 2010, May and June 2011, and August, September and October 2012.

26. The City’s failure to comply with the City’s NPDES permit effluent monitoring requirements of its NPDES permit, as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3
Failure to Comply with Effluent Limitations

27. The Effluent Limitations and Monitoring Requirements section of the City’s NPDES permit establishes effluent limitations for Outfall 001, including the following:

- a. BOD₅ – weekly average of 65 mg/L, monthly average of 45 mg/L and removal efficiency of 65%;

- b. TSS – weekly average of 110 mg/L, monthly average of 70 mg/L and removal efficiency of 65%;
- c. pH – maintained at or above 6.0 pH units;
- d. Ammonia as N – monitoring requirement only;
- e. Temperature – monitoring requirement only;
- f. O&G – daily maximum of 15 mg/L and monthly average of 10 mg/L; and
- g. Fecal Coliform – daily maximum of 1000 per 100 ml and monthly geometric average of 400 per 100 ml.

28. The EPA inspection, review of the City's monthly monitoring reports submitted to MDNR and review of the City's response to the Request for Information revealed that since October 2009, excluding the period from July 2011 through June 2012 when the City indicated its wastewater treatment plant was flooded and subsequent repairs were being made, the City violated the effluent limitations of its NPDES permit, as follows:

- a. The City exceeded the permitted weekly average effluent BOD₅ concentration in February 2010, February 2011, January, and October 2012;
- b. The City exceeded the permitted monthly average effluent BOD₅ concentration in October 2009, January and February 2010, February 2011, July, October and December 2012, and March 2014;
- c. The City failed to demonstrate compliance with the required 65% removal for BOD₅ in July 2012;
- d. The City exceeded the permitted weekly average effluent TSS concentration in July 2010, May 2011, July and September 2012, and July, August and September 2013;
- e. The City exceeded the permitted monthly average effluent TSS concentration in October 2009, July 2010, May 2011, July, September, October, November and December 2012, July, August and September 2013, and March 2014;
- f. The City failed to demonstrate compliance with the required 65% removal for TSS in July and August 2010, March, April and May 2011, July through December 2012, May through September 2013, and March 2014;
- g. The City reported effluent pH values less than the permitted daily minimum 4 times in 2010, 1 time in 2011, and 1 time in 2014;

- h. The City exceeded the permitted daily maximum effluent O&G concentration in February 2010;
- i. The City exceeded the permitted monthly average effluent O&G concentration in February 2010, and October 2013;
- j. The City exceeded the permitted daily maximum effluent Fecal Coliform concentration in July 2012, and September 2013; and
- k. The City exceeded the permitted monthly average effluent Fecal Coliform concentration in July 2012, September and October 2013.

29. The City's failure to comply with the City's NPDES permit effluent limitations as described above, is a violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

30. As specifically alleged by the EPA in the preceding Counts 1 through 3, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

CONSENT AGREEMENT

31. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, the EPA has determined that an appropriate civil penalty to settle this action is **Eleven Thousand Dollars (\$11,000)**.

32. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

33. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

34. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

35. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

36. 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.

37. 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.

38. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

39. Respondent consents that the civil penalty payment made pursuant to this Complaint and Consent Agreement/Final Order will not be deducted for purposes of federal taxes.

40. Respondent certifies by signing this Consent Agreement/Final Order that Respondent that is presently in compliance with Administrative Order for Compliance on Consent, EPA Docket No. CWA-07-2014-0077, to achieve compliance with all requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its NPDES permit.

41. 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.

42. The effect of settlement described in Paragraph 41 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in Paragraph 40.

43. 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 Eleven Thousand Dollars (\$11,000) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number "CWA-07-2014-0100" 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
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219.

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.

4. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

5. 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.

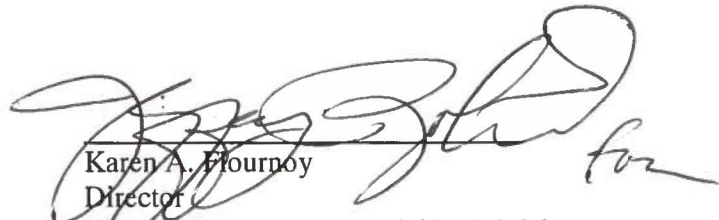
6. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.


7. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

**FOR THE COMPLAINANT,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7:**

Date 11/17/14


Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division


Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

**FOR THE RESPONDENT,
CITY OF WESTON, MISSOURI:**

09-26-2014
Date


Signature

Name: Howard Hellebuyck

Title: Mayor

IT IS SO ORDERED.

11-24-14
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested to:

The Honorable Peter Kerckhoff, Mayor
City of Weston
300 Main Street
Weston, Missouri 64098

and by first class mail to:

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

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

11/25/14
Date

Kathy Robinson
Name