

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
) Docket No. CWA-07-2006-0057
)
WILLIAM GEPFORD)
)
) CONSENT AGREEMENT/
) FINAL ORDER
)
Respondent)
)
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 November 30, 2005, 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 William Gepford, Butler, Missouri (Respondent), a 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 One Hundred Thirty Seven Thousand Five Hundred Dollars (\$137,500) for these violations. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order are the result of such negotiations.

CONSENT AGREEMENT

1. Respondent admits the jurisdictional allegations of the Complaint and this 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.
2. Respondent neither admits nor denies the factual allegations contained in the Complaint.
3. Respondent waives the right to a hearing under Section 309(g) (2) of the CWA, 33 U.S.C. § 1319 (g) (2), and to appeal any Final Order in this matter under Section 309(g) (8), 33 U.S.C. § 1319 (g) (8), and consents to the issuance of the Final Order and consents to the payment of a civil penalty as set forth below.
4. Issued at the same time as this Consent Agreement and Final Order is a separate Administrative Compliance Order on Consent that outlines how the Respondent will complete all of the necessary mitigation activities to restore the properties affected by the actions outlined in the Complaint. Respondent agrees to comply with the Administrative Compliance Order on Consent.
5. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.
6. This Consent Agreement and Final Order constitutes a settlement by EPA of all civil claims for penalties alleged in the Complaint for violations of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and regulations promulgated thereunder. Respondent's performance of its obligations under this Consent Agreement and Final Order shall resolve the civil claims alleged in the Complaint filed in this action.
7. Respondent and Complainant each agree to bear their own costs and attorney's fees.
8. 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.
9. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

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

1. Respondent shall pay a civil penalty of Forty Thousand Dollars (\$40,000). Said penalty shall be paid in full within twelve (12) months following receipt by Respondent of a fully executed copy of this Consent Agreement/Final Order. Four payments of \$10,000 shall be made, with the first payment due ninety (90) days after the effective date of the order. The second and third payments shall be due one hundred eighty (180) and two hundred seventy (270) days after the effective date of the Order, respectively. The final payment shall be due twelve (12) months from the effective date. For each payment the Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. EPA-Cincinnati Finance Center
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

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:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

And

Steven L. Sanders
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

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.

2. Upon satisfactory completion by Respondent of all activities required by this Order an authorized representative of the Complainant shall notify the Respondent in writing of said completion.

Parties Bound

3. This Final Order shall apply to and be binding upon the Respondent, his successors and assigns. Respondent shall provide a copy of this Consent Agreement and Final Order to any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein.

Reservation of Rights

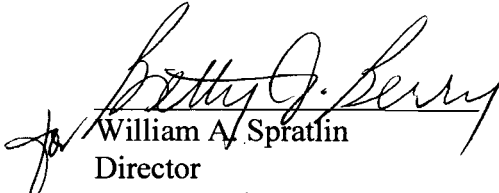
4. The EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

5. With respect to matters not addressed in this Final Order or the Administrative Compliance Order on Consent described in paragraph 4 of the Consent Agreement to be issued at the same time as this Consent Agreement and 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 punitive damages.


Effective Date

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


William A. Spratlin
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII

01/23/07
Date


Steven L. Sanders
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII


RESPONDENT:
WILLIAM GEPFORD

William Gepford
William Gepford

1-6-07
Date

IT IS SO ORDERED.

January 25, 2007
Date



Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF William Gepford, Respondent
Docket No. CWA-07-2006-0243 0057 KR

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:

Steven L. Sanders
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:

Michael P. Comodeca, Esq.
Spencer Fane Britt & Browne LLP
9401 Indian Creek Parkway, Suite 700
Overland Park, Kansas 66210-2005

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 1/25/07



Kathy Robinson
Hearing Clerk, Region 7