

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2014 MAY 30 AM 9:56
REGIONAL OFFICE
EPA REGION VI

In the Matter of	§	
	§	
City of Albuquerque, a New Mexico municipality,	§	DOCKET NO. CWA-06-2014-1740
	§	
	§	
Respondent	§	CONSENT AGREEMENT AND FINAL ORDER
	§	
NPDES Permit No. NMS000101	§	Pursuant to 40 C.F.R. § 22.13(b)

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.”

2. On May 9, 2014, EPA Region 6 issued to Respondent an Administrative Complaint (“Complaint”) under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against the Respondent, and gave notice of the Respondent’s opportunity to request a hearing on the proposed administrative penalty assessment.

3. EPA and Respondent (“Parties”) agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public’s interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged by EPA in the Complaint.

4. Respondent admits the jurisdictional allegations of the Complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or this CAFO. This CAFO states a claim upon which relief may be granted.

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the Complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below and consents to the performance of the Supplemental Environmental Project ("SEP") set forth below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The City of Albuquerque ("Respondent") is a municipality chartered under the laws of the State of New Mexico, and as such, the Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. Respondent owned or operated a Municipal Separate Storm Sewer System defined as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains)" located within the municipal boundaries of the City of Albuquerque, New Mexico ("MS4" or "facility"), and the operation of which was the subject of the Complaint.

9. The Complaint specified findings of fact and conclusions of law that are hereby incorporated by reference and alleged, among other things, that at the relevant times:

Respondent was a “person” that “owned or operated” a facility that acted as a “point source” subject to a “discharge” of “pollutants” to identified “waters of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. § 1251 *et seq.*, and the National Pollutant Discharge Elimination System (“NPDES”) program; and Respondent violated Section 402 of the Act, 33 U.S.C. § 1311, by failing to implement its MS4 Permit Number NMS000101 for the time period of September 2009 through July 2012. Specific violations include failure to provide adequate inspection staff, failure to conduct inspections, and failure to detect and prevent illicit discharges to the City of Albuquerque’s MS4 conveyance system. With the issuance of the Complaint, the State of New Mexico was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against the Respondent.

10. EPA notified the public of the complaint via the internet at <http://www.epa.gov/earth1r6/6en/public.html>, and afforded the public thirty (30) days to comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

11. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that the Respondent shall pay to the United States a civil penalty in the

amount of sixty-nine thousand dollars (\$69,000.00) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

12. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to one of the following addresses:

- a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

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

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-1028

- d. By credit card payments to: <https://www.pay.gov/paygov>

(enter sfo 1.1 in the search field)

“In the Matter of City of Albuquerque, Docket No. CWA-06-2014-1740” should be clearly marked on the check to ensure credit for payment.

13. The Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (a) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (b) Chief, NPDES Compliance Section (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (c) Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

14. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

15. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the

Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

16. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30)-day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30)-day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

17. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

18. Failure by the Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject the Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

19. In the event a collection action is necessary, the Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses,

including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

B. SUPPLEMENTAL ENVIRONMENTAL PROJECT

20. Respondent shall implement a SEP, the value of which may not be less than sixty-one thousand (\$61,000.00) dollars, which the parties agree is intended to secure significant environmental or public health improvement. The SEP shall be a pilot project that involves retrofitting of the open common area of the parking lot with permeable pavement in the parking stalls. Storm water flow from a portion of areas 15b and 19 (as depicted in Figure 15 of Respondent's Pino Yard LID Retrofit Study, Task 3 & 4 – Hydrology and BMP Optimization dated January 10, 2014), will flow over the permeable pavement. The intent is to capture and infiltrate the first 0.44 inches of rainfall from a portion of the Pino Yard and improve the quality of the discharge which eventually flows into the South Domingo Baca Arroyo. Respondent shall remove at least 5,400 square feet of the existing asphalt pavement in the northeast portion of the employee parking lot and replace it with permeable pavement (open cell pavers, etc.). Respondent shall also maintain this permeable pavement pilot project for a minimum of three years in order to assess its effectiveness in Albuquerque's arid climate. Respondent shall also monitor pollutant reduction performance at the SEP location for the following constituents: Oil and Grease, TPH, TSS, Cl-, TDS, BOD, COD, and nutrients. All design and construction elements of the SEP shall be completed no later than December 31, 2014.

21. With regard to the SEP, Respondent certifies the truth and accuracy of the following:

- a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate.
- b. No part of the SEP expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants. Respondent may not deduct from its taxes any expenses incurred as part of this settlement.

22. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

23. Whether Respondent has complied with the terms of this CAFO regarding the implementation of the SEP shall be the sole determination of EPA.

24. If Respondent fails to satisfactorily complete the SEP by the deadline set forth above, Respondent shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP as follows:

<u>Penalty per Violation per Day</u>	<u>Period of Non-compliance</u>
\$200	1 st through 30 th day
\$300	31 st day and beyond

25. Respondent shall submit a status report by January 30, 2015, summarizing the SEP construction activities.

26. Respondent shall submit a SEP Completion Report to EPA within forty-five (45) days after completion of all SEP activities. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. documented itemized costs of the SEP, e.g., by copies of purchase orders and receipts or canceled checks, and copies of monthly reports regarding labor costs, equipment costs, and materials purchased; and
- c. certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

d. A summary of the monitoring results including the effectiveness of the permeable pavements, the reduction of the pollutants, etc.

27. In the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

28. Nothing herein shall obligate Respondent to publicize its involvement in the SEP; however, any public statement, oral or written, made by Respondent to publicize its participation in SEP activities shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the EPA for violations of CWA provisions."

29. Respondent by execution of this CAFO, certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

IV. GENERAL PROVISIONS

30. To execute this Agreement, the Respondent shall sign and forward this copy of the CAFO, with original signature, to:

Ms. Darlene Whitten-Hill
Water Enforcement Branch (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

31. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of the Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

32. The provisions of this CAFO shall be binding upon the Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of the Respondent.

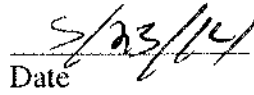
33. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that the Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

34. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:



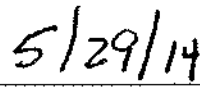
Robert J. Perry
Chief Administrative Officer
City of Albuquerque



Date



John Blevins
Director
Compliance Assurance and
Enforcement Division



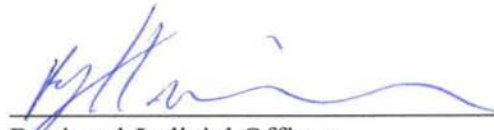
Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect the Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: _____

5/30/14



Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

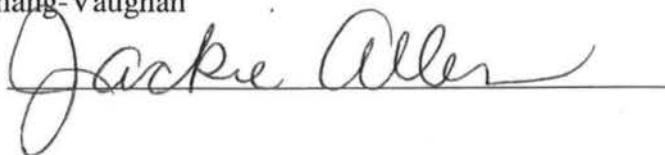
I hereby certify that on the 30 day of May, 2013, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Mr. Robert Perry
Chief Administrative Officer
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

with a copy, first class postage prepaid, to:

Mr. Bruce Yurdin
Acting Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Copy hand-delivered: Ms. Ellen Chang-Vaughan

A handwritten signature in black ink, reading "Jackie Allen", is written over a horizontal line.