

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

May 6, 2020

11:45 AM

Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF:

City of Salt Lake City
1530 South West Temple
Salt Lake City, UT 84115,

Respondent.

Docket No. CWA-08-2020-0008

CONSENT AGREEMENT

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding conducted pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (codified at 40 C.F.R. Part 22).
2. The City of Salt Lake City (City) owns and operates a municipal separate storm sewer system (MS4). The MS4 discharges pollutants to navigable waters. Discharges from the MS4 are regulated by permit. The EPA has determined that the City has violated its permit. The EPA and the City have reached agreement on settlement of this matter.
3. The EPA and the City consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and the City agrees to comply with the terms of this Agreement.
4. The City admits the jurisdictional allegations made herein.
5. The City neither admits nor denies the factual allegations made herein.
6. Without any admission of liability, the City consents to issuance of this Agreement through a final order issued by the Regional Judicial Officer of EPA Region 8 and agrees to abide by its terms, including the assessment of the penalty described in section V below.
7. The City waives any and all claims for relief and other rights or remedies to judicial or administrative review the City may have with respect to any issue of fact or law set forth in this Agreement including, but not limited to, any right of judicial review under the Administrative Procedures Act, 5 U.S.C. §§ 701-706, including in any proceeding to enforce this Agreement.

II. JURISDICTION

8. Section 301(a) of the Clean Water Act (Act), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with certain provisions of the Act, including compliance with the specific terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit pursuant to section 402 of the Act, 33 U.S.C. § 1342. (*See also*, 40 C.F.R. Part 122)

9. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a NPDES program under which the EPA, and states authorized by the EPA, may permit discharges of pollutants into navigable waters associated with industrial activities, subject to specific terms and conditions.
10. The Utah Department of Environmental Quality (UDEQ) Division of Water Quality (DWQ) was approved by EPA to administer the NPDES program on July 7, 1987. 52 Fed. Reg. 27578-27579 (July 22, 1987). A permit issued by DWQ under Utah's EPA-approved NPDES program is known as a Utah Pollutant Discharge Elimination System (UPDES) permit.
11. Effective February 1, 2015, the DWQ authorized the City to discharge storm water from its MS4 in accordance with UPDES permit No. UTS000002 (Permit). The Permit, as revised in 2015, imposed new requirements.
12. The United States may enforce a state-issued NPDES permit under section 402(i) of the Act, 33 U.S.C. § 1342(i).
13. This Agreement is issued under the authority vested in the Administrator of the EPA by Section 309(g) of the Act, 33 U.S.C. § 1319(g). The undersigned EPA official has been duly authorized to institute this action.
14. The Regional Judicial Officer of EPA Region 8 is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b). The final order approving this Agreement, if issued (Order), simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
15. The EPA has consulted with UDEQ's DWQ on this matter.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. The City is a municipality chartered under the laws of the State of Utah, and a "person" as that term is defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
17. The Jordan River is a "navigable waters" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
18. The City-owned and operated system of storm water conveyances is a "municipal separate storm sewer" as that term is defined in 40 C.F.R. § 122.26(b)(8).
19. The City-owned and operated MS4 is a "large municipal separate storm sewer system" (MS4) as defined in 40 C.F.R. § 122.26(b)(4).
20. The City's MS4 discharges storm water to the Jordan River or its major tributaries from at least 65 outfalls.
21. The City's MS4 is a "point source" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).
22. Discharges from the City's MS4 result in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12). *See, also*, 40 C.F.R. § 122.2.

23. The City is authorized to discharge pollutants from its MS4 in compliance with the Permit.
24. On August 29 through September 2, 2016, approximately 19 months from the issuance of the Permit, the EPA and the DWQ conducted an audit to determine compliance with the Permit (Audit).
25. On January 3, 2018, the EPA transmitted a report of the EPA and DWQ audit (Audit Report) to the City. The Audit Report identified 23 findings alleging likely violations of the Permit in the City's implementation of its MS4 program.
26. On March 9, 2018, the City responded to the Audit Report. The City's response disputed many of the Audit findings and described the status of certain actions the City had begun to implement.
27. The EPA and the City have continued to discuss the Audit findings and the City has continued its efforts to come into compliance.
28. As of the date of the EPA's signature on this Agreement, the City has satisfactorily addressed the findings described in section IV below, except the City continues to work with the City Council to amend the City Ordinance to ensure the City Ordinance explicitly: grants the City access to inspect stormwater control measures on private property; and requires maintenance by owner. The City amendment to the Ordinance reflecting these requirements will be effective by September 30, 2020.

IV. ALLEGED VIOLATIONS OF LAW

29. As of the dates of the Audit, the City had failed to develop and maintain a complete storm water management program document (SWMP) as required by part 4.1.1.6 of the Permit by failing to include the following in the SWMP: written systematic procedures for locating priority areas likely to have illicit discharges and a list of those priority areas (part 4.2.3.3.1); and the process for and results of an assessment of municipal facilities and operations for their potential to discharge a list of urban pollutants (part 4.2.6.2).
30. As of the dates of the Audit, the City did not have an adequate system to ensure that spills and illicit discharges are adequately tracked and corrected as required by parts 4.2.3.5, 4.2.3.6 and 4.2.3.10 of the Permit.
31. As of the dates of the Audit, the City had failed to assess its municipal facilities and operations for the potential to discharge stormwater containing a list of urban pollutants as well as additional pollutants determined to be present in stormwater discharges from these operations, and to prioritize those operations for oversight as required by parts 4.2.6.2 and 4.2.6.3 of the Permit.
32. As of the dates of the Audit, the City had failed to develop tailored SOPs for each priority municipal facility, an inventory and map of its floor drains, and to conduct quarterly comprehensive inspections with a documented log of corresponding corrective actions as required by parts 4.2.6.4.1 and 4.2.6.6.1 of the Permit.
33. As of the dates of the Audit, the City had failed to describe the factors the City considers when the City analyzes whether it may be infeasible to place materials dredged or otherwise removed

from ditches, catch basins and other components of the MS4 infrastructure during regular cleaning within contained areas for dewatering, and discharge liquids removed during this process to the local sanitary sewer as required by part 4.2.6.4.6 of the Permit.

34. As of the dates of the Audit, the City had failed to develop and implement an inspection and enforcement program for priority commercial facilities by February 1, 2016, as required by part 4.3.4 of the Permit.
35. As of the dates of the Audit, the City had failed to implement an ordinance or other regulatory mechanism explicitly granting the City explicit access to stormwater control measures and requiring maintenance by owners as required by parts 4.2.4.1 and 4.2.5.5.1 of the Permit. The City also had failed to implement an ordinance or other regulatory mechanism supporting an enforcement strategy as required by parts 4.2.3.1, 4.2.4.1 and 4.2.5.2 of the Permit.
36. As of the dates of the Audit, the City had failed to develop and implement components of an inspection and tracking program for the construction sites program as required by parts 4.2.4.3 and 4.2.4.4 of the Permit.
37. As of the dates of the Audit, the City had failed to track and account for maintenance information about post-construction structural control measures by February 1, 2016, as required by part 4.2.5.7.1 of the Permit.
38. As of the dates of the Audit, the City had a wet weather monitoring plan, but failed to evaluate what the wet weather monitoring data indicates about how and whether the City's MS4 is meeting the water quality objectives of the Permit as required by part 5.2 of the Permit.

V. TERMS OF CONSENT AGREEMENT

39. Section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to assess a civil penalty in this matter.
40. In determining the amount of any penalty to be assessed, EPA considered the statutory penalty factors, including the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, in accordance with section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).
41. After consideration of the alleged violations of law described in section IV above, and after consideration of the statutory factors, EPA has determined a civil penalty of \$65,000.00 is appropriate to settle this matter.
42. The City agrees to:
 - a. pay a civil penalty in the amount of \$65,000.00 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following web page:
<https://www.epa.gov/financial/makepayment>;

- c. identify each and every payment with the docket number that appears on the final order; and
 - d. within 24 hours of payment, email proof of payment to Emilio Llamozas, Environmental Engineer at Llamozas.Emilio@epa.gov (proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to the requirements set forth on the payment web page, in the amount due, and identified with the docket number that appears on the final order).
43. If the City fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General bring a civil action in an appropriate federal district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
 - b. refer the debt to a credit reporting agency or a collection agency pursuant to 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke the City's licenses or other privileges or suspend or disqualify the City from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
44. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), the City will not deduct penalties paid under this Agreement for federal tax purposes.
45. This Agreement applies to the City and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. The City must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the MS4. Any change in ownership or control of the City, including but not limited to, any transfer of assets or real or personal property shall not alter the City's responsibilities under this Agreement.
46. The undersigned representative of the City certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
47. The parties consent to service of this Agreement and the Order by e-mail at the following valid e-mail addresses: figur.charles@epa.gov (for Complainant), and Megan.DePaulis@slcgov.com (for Respondent). The Respondent consents to e-signatures by the Agency.

48. Except as qualified by paragraph 43 each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

VI. EFFECT OF CONSENT AGREEMENT

49. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
50. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer or other EPA delegatee.
51. Any violation of this Agreement after issuance of final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$21,933 per day per violation, or both, as provided in section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and adjusted for inflation pursuant to 40 C.F.R. Part 19. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
52. Nothing in this Agreement shall relieve the City of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
53. Nothing herein shall be construed to limit the power of EPA to undertake any action against the City or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
54. If and to the extent EPA finds, after signing this Agreement, that any information provided by the City was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VII. PUBLIC NOTICE

55. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA will provide public notice and a reasonable opportunity to comment on the penalty that the City has agreed to pay in this matter. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.
56. If comments received during the public comment period do not require modification or withdrawal by EPA from this Agreement, the parties agree to submit this Agreement to the Regional Judicial Officer following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a Final Order.

VIII. EFFECTIVE DATE

57. This Agreement shall become effective on the date the Final Order is filed by the Hearing Clerk.

Consent Agreement: In the Matter of the City of Salt Lake City

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

Date: _____

By: _____
Colleen Rathbone, Chief
Water Enforcement Branch

**THE CITY OF SALT LAKE CITY
Respondent.**

Date: April 30, 2020

By: _____

Laura Briefer, Director
Department of Public Utilities
Salt Lake City Corporation