



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL 7012 1010 0001 8097 1020
RETURN RECEIPT REQUESTED

NOV 07 2013

The Honorable Johnny S. Adams
Mayor of Lynch
6 East Main Street
P.O. Box 667
Lynch, Kentucky 40855

■ Re: Consent Agreement and Final Order
Docket No.: CWA-04-2013-4523(b)
National Pollutant Discharge Elimination System Permit No.: KY0024279
City of Lynch

Dear Mayor Adams:

Enclosed, please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Mary Mattox at (404) 562-9733 or via email at mattox.mary@epa.gov. Legal inquiries should be directed to Ms. Michele Wetherington, Assistant Regional Counsel, at (404) 562-9613 or via email at wetherington.michele@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Jeff Cummins
Kentucky Department for Environmental Protection

Mr. Tom Gabbard, Branch Manager
Kentucky Department for Environmental Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARING CLERK

2013 NOV -7 PM 3: 16

RECEIVED
EPA REGION IV

IN THE MATTER OF:

City of Lynch, Kentucky
Wastewater Treatment Plant

RESPONDENT.

)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
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)
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) DOCKET NO. CWA-04-2013-4523(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator for Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA, Region 4 ("Complainant").

II. Allegations

3. The City of Lynch ("Respondent") is a municipality existing under the laws of the Commonwealth of Kentucky and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). The Public Works Department of Lynch is responsible for wastewater treatment.

4. At all times relevant to this action, Respondent owned and/or operated a Wastewater Treatment Plant ("WWTP"), located in Harlan County at 317 East Main Street in Lynch, Kentucky.

5. To accomplish the objectives of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of

pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the Commonwealth of Kentucky through the Department for Environmental Protection ("KDEP") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The Lynch WWTP is operating under NPDES Permit No. KY0024279 issued on May 1, 2004, and administratively continued on its expiration on June 30, 2008.

8. The permit requires the Respondent to properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment.

9. On September 21, 2011, the EPA conducted a Compliance Evaluation Inspection (CEI) of the WWTP to evaluate the Respondent's compliance with the NPDES Permit and the CWA. The CEI identified violations related to the operation and maintenance of facilities and systems for collection and treatment, including debris from the chlorine contact chamber, broken pipes and faulty valves, overgrowth from sludge drying beds, and lack of documentation of buffers used and flow records.

10. On June 12, 2012, the EPA sent a Letter of Concern ("LOC"), under Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to the Respondent regarding deficiencies identified during the inspection. The LOC outlined the deficiencies identified in the CEI and requested information on corrective actions planned or taken to address the deficiencies. The LOC also required a schedule for actions planned.

11. On July 12, 2012, the EPA received a response to the LOC from Mayor John Adams. In the response, Mayor Adams stated that the WWTP operator was in the process of correcting issues cited in the LOC but there were a number of deficiencies remaining to be corrected. Specifically, the WWTP failed to correct the deficiencies identified in Paragraph 9.

12. On September 28, 2012, the EPA issued Administrative Order on Consent ("AOC") No. CWA-04-2012-4785 to the Respondent, requiring the Respondent to address the unresolved deficiencies identified during the CEI inspection.

13. The Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the NPDES Permit, by failing to comply with the operation, maintenance and reporting requirements of its Permit.

III. Stipulations and Findings

14. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

15. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

16. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

17. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

18. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

19. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

20. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

21. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Four Thousand Dollars (\$4,000) is an appropriate civil penalty to settle this action.

22. Respondent shall submit payment of the penalty specified in the preceding paragraph **in accordance with the schedule described in Paragraph 24 below** via a cashier’s or certified check, payable to the order of “Treasurer, United States of America”. The checks shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

23. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

24. Respondent shall pay a civil penalty in the amount of \$4,000 as follows:
- A. Within two (2) months of the effective date of this CA/FO, Respondent shall pay \$1,000;
 - B. Within five (5) months of the effective date of this CA/FO, Respondent shall pay \$1,000;
 - C. Within eight (8) months of the effective date of this CA/FO, Respondent shall pay \$1,000;
 - D. Within eleven (11) months of the effective date of this CA/FO, Respondent shall pay \$1,000.

25. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

26. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

27. This CA/FO shall not 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. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

28. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

29. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment or to pursue criminal enforcement.

30. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

31. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

32. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

33. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

34. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Michele Wetherington
Assistant Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9613

For Respondent:

The Honorable Johnny S. Adams
Mayor, City of Lynch
6 East Main Street
P.O. Box 667
Lynch, Kentucky 40855

35. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a Consent Agreement and proposed Final Order based on comments received during the public comment period.

36. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the Commonwealth of Kentucky was provided a prior opportunity to consult with Complainant regarding this matter.

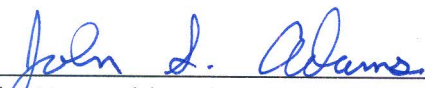
37. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

38. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

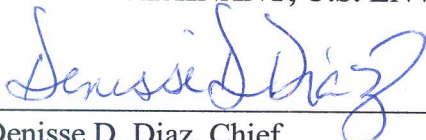
For RESPONDENT, CITY OF LYNCH, KENTUCKY:



The Honorable Johnny S. Adams
Mayor
City of Lynch, Kentucky

Date: 08-26-2013

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA, Region

Date: 11/7/13

IN THE MATTER OF:

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) CONSENT AGREEMENT AND
) FINAL ORDER
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)
) DOCKET NO. CWA-04-2013-4523(b)
)

City of Lynch, Kentucky
Wastewater Treatment Plant

RESPONDENT.

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Nov 7, 2013

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

