

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

2015 JUN 18 AM 10:39

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF)	Docket No. CWA 07-2015-0025
)	
City of St. Peters, Missouri)	
)	
A Municipality)	
)	COMPLAINT AND CONSENT
)	AGREEMENT / FINAL ORDER
)	
Proceedings under Section 309(g))	
of the Clean Water Act,)	
33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This Administrative Complaint (“Complaint”) has been filed under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and 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 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) alleges that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, is the Director of Region 7’s Water, Wetlands and Pesticides Division.

4. The City of St. Peters, Missouri (hereafter “Respondent” or “City”), is a political subdivision of the state of Missouri and a “municipality” within the meaning of 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works (“POTW”) that treats domestic, commercial, and industrial wastewater.

Statutory and Regulatory Framework of Section 301 of the CWA

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

8. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

9. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and MDNR dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

Factual Background

10. The City of St. Peters is a political subdivision of the state organized under the laws of Missouri, and as such is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources.

12. The City’s POTW discharges to Spencer Creek, which is a “navigable water” and “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

13. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

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

15. 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.

16. MDNR issued NPDES Permit No. MO-0030970 to the City for discharges from its POTW to Spencer Creek. The NPDES permit (hereafter "NPDES permit") became effective May 13, 2011, was modified March 26, 2014, and expires May 12, 2016.

17. In January 2014, an EPA representative performed a Sanitary Sewer Overflow Inspection of the City's POTW 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.

18. During the EPA inspection described in Paragraph 17 above, the inspector completed the inspection checklist, reviewed the City's records related to self-monitoring, preventative maintenance, and cleaning, reviewed the City's records, and observed the POTW, including visually inspecting manholes and lift stations.

19. Respondent's NPDES permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the NPDES permit as one or more "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permit.

20. Within the past five years, Respondent has discharged untreated wastewater to waters of the United States from manhole locations, specifically 7070MH013 and 7070MH019, within the Respondent's POTW. None of the manhole locations where the discharges occurred are numbered outfalls identified in Respondent's NPDES permit.

21. Of the unauthorized discharges described in Paragraph 20, two (2) discharged untreated wastewater to Dardenne Creek. Dardenne Creek is a "navigable water" and "water of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation, 40 C.F.R. § 122.2.

22. EPA alleges that each unauthorized discharge of pollutants identified in Paragraph 20 and 21 above, into the receiving waters described in Paragraph 21 is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

23. EPA alleges that each unauthorized discharge identified in Paragraphs 20 and 21 above, is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, and as such is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Allegations of Violation Of Section 301 Of The CWA

24. The facts stated in Paragraphs 10 through 23, above, are herein incorporated.

Unauthorized Discharges

25. Upon review of the City's Reports submitted to MDNR described in Paragraph 18, the City has discharged pollutants from the City's POTW at locations other than Outfall 001 on at least two (2) occasions in September 2014, and upon information and belief, the unauthorized discharges continue to the present. These unauthorized discharges are not permitted or otherwise authorized by the CWA.

26. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violations of Respondent's NPDES Permit

27. Pursuant to 40 C.F.R. § 122.41(e), Respondent's NPDES permit contains the following Standard Condition at Part I.B.3: "Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions... ." Part I.B.4 Respondent's NPDES permit requires that "[t]he permittee shall take all necessary steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit or set forth in the Missouri Clean Water Law and Regulation... ." (hereafter Part I.B.3 and 4 collectively referred to as the "Proper Operation and Maintenance Conditions").

28. Part A, Effluent Limitations and Monitoring Requirements, of Respondent's NPDES permit authorizes discharges *only* from Outfall 001 at the wastewater treatment facility.

29. Paragraph 5, Standard Conditions, of Respondent's NPDES permit prohibits any bypass or shut down of facilities or tributary sewer system that results in a violation of permit limits or conditions, except under circumstances not applicable here.

30. Many of the unauthorized discharges alleged in Paragraphs 20 and 21 above, resulted, in whole or in part, from Respondent's failure to comply with the Standard Conditions in Respondent's NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

CONSENT AGREEMENT

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

32. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement and Final Order ("CA/FO").

33. 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 the Final Order portion of this CA/FO.

34. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

35. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified in the Paragraphs above, existing through the effective date of this CA/FO. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

36. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. §1251 *et seq.*, and all regulations promulgated there under.

37. The effect of settlement described in Paragraph 35, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 36, above, of this CA/FO.

38. The 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.

39. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

40. 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.

41. Respondent agrees to undertake the Supplemental Environmental Project (“SEP”), identified in Appendix A, which is enclosed to and incorporated into this CA/FO. The parties agree that performance of the SEP, set forth in Appendix A, is intended to secure significant environmental restoration and protection.

42. Within thirty (30) days of the effective date of this Final Order, Respondent shall submit a Work Plan to EPA that describes the implementation of the SEP identified in Appendix A. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the start and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA’s comments within fifteen (15) days after receipt of EPA’s written comments. The Work Plan shall become a Final Work Plan upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than twenty-four (24) months from the effective date of this Final Order.

43. Respondent shall notify EPA in writing within one week after the completion of the SEP. Within forty-five (45) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

- a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.
- b. A signed and notarized certification that it has not deducted the SEP cost from its taxes.
- c. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
- d. An itemized accounting of the costs incurred per project in performance of the SEP. The itemization shall be submitted with the following statement, signed by Respondent:

I certify that the information accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the United States, its agencies and departments, including the possibility of fine and imprisonment for knowing violations.

44. Respondent shall pay stipulated penalties in the following circumstances:

- a. Except as provided in subparagraphs (b) and (c) below, for a SEP, which has not been completed satisfactorily as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount of Eight Thousand Six Hundred and Forty

Dollars (\$8640), along with interest accrued at the statutory rate.

b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 55% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.

c. If the SEP is satisfactorily completed, but the Respondent spent less than 55% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Attachment 1 and the amount expended in implementing the SEP.

d. If no SEP is implemented and the penalty of Five Thousand Seven Hundred and Sixty Dollars (\$5760) is not made within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500) in addition to that which is due, along with interest accrued at the statutory rate.

45. Payment of the stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with the provisions of this Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

The check shall note the case title and the docket number. A copy of the check shall be sent to Melissa A.C. Bagley, Assistant Regional Counsel, EPA-Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

46. Respondent hereby certifies that, as of the date of this CA/FO, 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 enforcement action 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.

47. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to property not owned by Respondent that is the location of a SEP at all reasonable times to monitor Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

48. Respondent agrees that it will not deduct the cost of the SEP, as set forth in Appendix A, from its taxes.

49. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of Five Thousand Seven Hundred and Sixty Dollars (\$5760).

50. Respondent agrees to pay Five Thousand Seven Hundred and Sixty Dollars (\$5760) within thirty (30) days of the effective date of the Final Order. Payments shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payments shall reference docket number CWA-07-2015-0025.

51. A copy of the check should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Melissa A.C. Bagley
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

52. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

53. The undersigned representative(s) of Respondent certifies that he is fully authorized to enter the terms and conditions of this Complaint and CA/FO and to execute and legally bind Respondent to it.

54. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This CA/FO may be executed by EPA upon receipt from Respondent of a signature page. Upon its execution, a copy of the executed agreement shall be sent by U.S. mail to Respondent.


55. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.


56. Respondent agrees that the original Consent Agreement and Final Order signed by Respondent shall be transmitted to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Upon the EPA's receipt of the signed original from Respondent and public notice in accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of 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 ("Consolidated Rules") by 40 C.F.R. Part 22, it shall be filed with the Regional Hearing Clerk.


COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



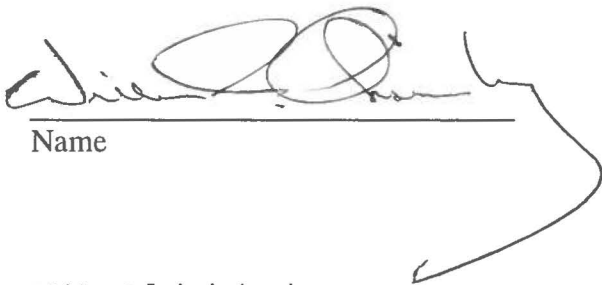
Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division


Date


Melissa A.C. Bagley
Assistant Regional Counsel


Date

FOR RESPONDENT:
CITY OF ST. PETERS, MISSOURI:

A handwritten signature in black ink, appearing to read "William J. Smith", is written over a horizontal line. A long, thin arrow-like stroke extends from the right side of the signature down towards the title line.

Name

City Administrator

Title

April 13, 2015

Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.

6-18-15
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

APPENDIX A: SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Background

The City of St. Peters obtains its water from two sources, the Missouri River and a groundwater well field located in the Mississippi River flood plain. The Missouri River water supply is treated at the City of St. Louis Howard Bend Water Treatment Plant prior to being pumped through a transmission main underneath the Missouri River into St. Peters. The groundwater supply is treated at the St. Peters Water Treatment Plant and then pumped into the distribution system. St. Peters has a number of pumps that send water from underground wells in the Mississippi River floodplain to its lime-softening Water Treatment Plant where it's prepared for customers' use.

After the water is treated at the Water Treatment Plant water is pumped into the distribution and storage system. The City has three elevated storage tanks, five ground storage tanks, and three booster pumping stations that store and pump water through the distribution system.

Supplemental Environmental Project

St. Peters will replace five of the existing standard efficiency electric motors at the oldest two of the three water booster pumping stations with premium-efficiency motors. The existing five, standard efficiency, 40-hp motors will be replaced with premium efficiency, 40-hp, inverter duty motors. The project is expected to reduce energy consumption by approximately five to eight percent. This sustainability initiative will help to reduce greenhouse gas emissions from City government operations.

In addition to increasing electrical efficiency with the installation of premium efficiency motors, the City also plans to install soft start controllers. The combination of the soft start controllers and premium efficiency motors will eliminate across the line starting, high amperage inrush with zero torque on the pump parts. This will further reduce energy consumption and increase pump life expectancy.

Supplemental Environmental Project Location

The location of this project is at both the Cave Springs and Crescent Hills Booster Pumping Stations. These stations are located along Ticonderoga Drive and Universal Drive, respectively.

Total Supplemental Environmental Project Cost

The City will spend at least \$17,000.

Schedule for Implementation of the Supplemental Environmental Project

The City shall spend at least \$17,000 to implement this SEP within two years of the effective date of this Order.

IN THE MATTER OF City of St. Peters, Missouri, Respondent
Docket No. CWA-07-2015-0025

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

bagley.melissa@epa.gov

Copy by First Class Mail to:

The Honorable Leonard B. Pagano
Mayor, St. Peters
100 Ecology Drive
St. Peters, Missouri 63376

Dated: 6/18/15



Kathy Robinson
Hearing Clerk, Region 7