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July 23, 2010

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Tyrone Borough – EPA Administrative Penalty Complaint, EPA Docket No.
CWA-03-2010-0266
Our File: 177-448

To whom it may concern:


Enclosed please find the Borough of Tyrone's Answer to Administrative Penalty Complaint and Request for Hearing that I wish to file in the above captioned matter. Per the instructions given in the Complaint, I am serving a copy of this Answer on Kelly Gable, Assistant Regional Counsel (3RC20) for U.S. EPA Region III. Please file the original copy of this Answer of record, and return the time stamped copy to me in the enclosed envelope.

In addition to requesting a hearing in the Answer, Tyrone Borough will request a settlement conference with Ms. Gable when it serves a copy of the Answer on her office.

Thank you for your time and attention to this matter. Please contact me if you have any questions regarding this letter.

Sincerely,

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT



Daniel L. Stants, Esquire

Enclosures

Cc: Phyllis Garhart, Interim Manager, Tyrone Borough
Kelly Gable, Esquire, U.S. EPA Region III

July-28-2010

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

_____ : Proceeding to Assess Class I
In the Matter of: : Administrative Penalty Under
: Section 309(g) of the Clean
: Water Act
Borough of Tyrone :
1100 Logan Avenue : EPA Docket No. CWA-03-2010-0266
Tyrone, Pa. 16686 :
Respondent. : **ANSWER TO ADMINISTRATIVE PENALTY
COMPLAINT AND REQUEST FOR
HEARING**
_____ :

I. STATUTORY AUTHORITY

1. After reasonable investigation Respondent is unable to verify the truth of the averments of this paragraph and strict proof of such is demanded at the hearing to be scheduled in this matter.
- 2 – 8. The averments of these paragraphs state conclusions of law to which no response is required.

II. FINDINGS OF FACT

9. The averments of this paragraph state conclusions of law to which no response is required.
10. It is admitted that the Permit that was issued to Respondent states that it was issued on February 8, 2008.
11. The averments of this paragraph state conclusions of law to which no response is required.
12. It is admitted that the Permit indicates a date of expiration of February 28, 2013.

III. FINDINGS OF VIOLATION

Count I – Failure to Submit Reevaluation of Local Limits

13. It is admitted that the Permit states that Respondent must “submit to EPA and DEP, a reevaluation of its local limits based on a headworks analysis of its treatment plant within one year of permit issuance.”
14. It is admitted that based on the language quoted in Paragraph 13 herein, Part C, Section IV(E) of the Permit would require Respondent to submit a reevaluation of its local limits to EPA and DEP by February 8, 2009 based on a Permit issue date of February 8, 2008.
15. The averments of this paragraph are specifically denied, and strict proof of such is demanded at the hearing to be scheduled in this matter. By way of further response, in 2007 Respondent, at the direction of DEP pursuant to its 2005 NPDES Permit, began a new headworks analysis approximately two and one half years prior to the issuance of its current NPDES Permit, issued February 8, 2008. This Permit was issued outside of the normal cycle in response to DEP’s Chesapeake Bay Tributary Strategy. This analysis had been submitted to EPA, and Respondent was still working with EPA to address issues that EPA had with limits included in its submission at the time that the February 8, 2008 Permit was issued. Respondent has been engaged in an ongoing dialogue and exchange of information with EPA since 2007 and up through and since the time it was served with the Complaint. This dialogue continued beyond the time of the application and receipt of the February 8, 2008 Permit to the present. Respondent has continued to submit data associated with headworks analysis to EPA at its request, and the data submitted has indicated that there has been no significant change to the local limits from the time of its 2007 submission. To the extent that any change in limits has occurred, the result has been an actual reduction of the substances found in the influent water to the sewer plant from the earlier submission.
16. The averments of this paragraph state conclusions of law to which no response is required.
17. The averments of this paragraph state conclusions of law to which no response is required.
18. The averments of this paragraph are specifically denied, and strict proof of such is demanded at the hearing to be scheduled in this matter. As stated in Paragraph 15, Respondent has continued to submit information to EPA as requested regarding its local limits and its limits have undergone continuous reevaluation by EPA since the time of its submission.

Count II – Failure to Submit Sampling Plan

19. It is admitted that the Permit states that Respondent must submit “to EPA and DEP within three months of permit issuance” “a sampling plan for collection of necessary data.”

20. It is admitted that based on the language quoted in Paragraph 19 herein, Part C, Section IV(E) of the Permit would require Respondent to submit a sampling plan for collection of necessary data to EPA and DEP by May 8, 2008.
21. The averments of this paragraph are specifically denied, and strict proof of such is demanded at the hearing to be scheduled in this matter. By way of further response, Respondent, as detailed in Paragraph 15 herein, was still in the process of working with the EPA to address matters associated with the previously submitted headworks analysis, and those discussions have continued to the present time. Respondent has engaged in discussions with EPA regarding the sampling schedule and methods as late as June 23, 2010 as part of that process.
22. The averments of this paragraph state conclusions of law to which no response is required.
23. The averments of this paragraph state conclusions of law to which no response is required.
24. The averments of this paragraph are specifically denied, and strict proof of such is demanded at the hearing to be scheduled in this matter. As stated in Paragraph 15, Respondent has continued to submit information to EPA as requested regarding its local limits and its limits have undergone continuous reevaluation by EPA since the time of its submission. These discussions have included the sampling schedule and methods to be used in the course of the reevaluation of its local limits.

IV. PROPOSED CIVIL PENALTY

25. The averments of this paragraph state conclusions of law to which no response is required.
26. After reasonable investigation Respondent is without sufficient information to admit or deny the contents of this paragraph and, therefore, they are denied and strict proof of such is demanded at the hearing to be scheduled in this matter.
27. The averments of this paragraph state conclusions of law to which no response is required.
28. The averments of this paragraph state conclusions of law to which no response is required.

V. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

- 29-34. The averments of these paragraphs state conclusions of law to which no response is required.

35. The averments of this paragraph state conclusions of law to which no response is required. To the extent that a response is required, Respondent hereby requests a hearing on the proposed civil penalty associated with the Complaint.

36-39. The averments of these paragraphs state conclusions of law to which no response is required.

VI. SETTLEMENT CONFERENCE

40. After reasonable investigation Respondent is without sufficient information to admit or deny the contents of this paragraph and, therefore, they are denied and strict proof of such is demanded at the hearing to be scheduled in this matter. By way of further response, Respondent requests a settlement conference to discuss the allegations in the Complaint to see if a suitable settlement can be negotiated.

41. The averments of this paragraph state conclusions of law to which no response is required. By way of further response, Respondent requests a settlement conference to discuss the allegations in the Complaint.

42. After reasonable investigation Respondent is without sufficient information to admit or deny the contents of this paragraph and, therefore, they are denied and strict proof of such is demanded at the hearing to be scheduled in this matter.

43. The averments of this paragraph state conclusions of law to which no response is required.

44. Respondent will be contacting Ms. Gable to arrange a settlement conference.

45. Respondent's legal counsel will contact Ms. Gable on Respondent's behalf.

46. The averments of this paragraph state conclusions of law to which no response is required.

VII. QUICK RESOLUTION

47-57. The averments of these paragraphs state conclusions of law to which no response is required. To the extent that a response may be required, Respondent does not wish to resolve this proceeding by paying the specific penalty proposed in the Complaint.

VIII. PUBLIC PARTICIPATION

58-60. The averments of these paragraphs state conclusions of law to which no response is required.

OPPOSITION TO PROPOSED CIVIL PENALTY

EPA requests that Respondent be assessed a Civil Penalty of \$27,000.00 because it contends that Respondent did not submit a headworks analysis or sampling plan within the deadlines specified by the February 8, 2008 Permit. Respondent opposes this fine, because Respondent was performing a headworks analysis at the time of the issuance of the Permit and was still engaged in an ongoing dialogue and exchange of information with EPA associated with this analysis at the time that the Permit was issued. At that time, and subsequent to the issuance of the Permit, EPA was still requesting that Respondent change the influent limits in its analysis prior to its approval of the headworks analysis, and was still working with Respondent on what would become the final headworks analysis for the Borough of Tyrone. Because of this ongoing process, it would have not been economically efficient, nor was it practically necessary, to begin a new headworks analysis, starting the process over again, as there had been no change in the industries in the area served by the sewer treatment plant, nor any change in the capabilities or capacity of the plant. As a result, Respondent was under the impression, which was confirmed by its ongoing efforts to reach the limits desired by EPA, that it was engaged in a process to establish a headworks analysis and sampling plan that would cover the entire time period of the February 8, 2008 Permit.

From the time of the issuance of the February 8, 2008 Permit to the service of the Complaint, Respondent was not warned by EPA that it faced a potential civil fine for continuing dialogue with EPA over its headworks analysis begun prior to the issuance of its 2008 Permit. Throughout that entire period of time, Respondent was engaged in a continuing dialogue with John Lovell of EPA attempting to reach an agreement on the levels of certain substances in the influent water being treated by the sewer plant, and was unaware that the completion of this process would not result in a headworks analysis plan that would satisfy the requirements of the period of the Permit. According to the Complaint, Respondent committed violations of the Clean Water Act for failing to submit reports to EPA by dates certain, however, this fails to take into account the ongoing nature of Respondent's efforts to address that very issue with EPA. If it was necessary for Respondent to submit an entirely new headworks analysis and sample plan, then EPA had no basis for continuing to request additional information and changes in the previous analysis, which was submitted during a time when Respondent already had been issued a valid permit and was not required to submit such a plan.

Throughout the period of time since the issuance of the Permit, the level of pollutants found in the influent water to the plant have not significantly changed from those that existed at the time of Respondent's 2007 headworks analysis submission, which is known by EPA and which EPA has acknowledged as recently as March 30, 2010. In the few cases where there have been changes, the result has been a reduced amount of copper and zinc found in the waste water. As a result, no harm has been caused to the waters of the United States, as conditions have only improved throughout this entire time period. Throughout the entirety of the period since the Permit was issued, Respondent has engaged in a dialog with John Lovell of EPA regarding the local limits for the Respondent's sewer plant, and has submitted updated information regarding those limits whenever requested. If it were necessary for Respondent to restart the entire process, then EPA should have requested that it do so and not continued to request information associated with the headworks analysis that was begun prior to the submission of the NPDES

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REGION III
1650 Arch Street
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	:	Section 309(g) of the Clean
	:	Water Act
Borough of Tyrone	:	
1100 Logan Avenue	:	EPA Docket No. CWA-03-2010-0266
Tyrone, Pa. 16686	:	
	:	ANSWER TO ADMINISTRATIVE PENALTY
Respondent.	:	COMPLAINT AND REQUEST FOR
	:	HEARING
	:	

CERTIFICATE OF SERVICE


This is to certify that I, Daniel L. Stants, Esquire, served a copy of the Respondent's Answer to Administrative Penalty Complaint and Request for Hearing, on the 23rd day of July, 2010, via First Class United States Mail, postage prepaid and addressed to the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103 – 2029

Ms. Kelly Gable
Assistant Regional Counsel (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103 – 2029

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By


Daniel L. Stants, Esquire
Attorney for Plaintiff
Attorney I.D. #200034
414 N. Logan Boulevard
Altoona, PA 1660
(814) 946-4391

Permit application. Respondent has attempted in good faith to comply with the requirements imposed in this somewhat fragmented approach to satisfy EPA and DEP's evolving Chesapeake Bay Tributary Strategy.

REQUEST FOR HEARING

Respondent requests that a hearing be scheduled on this matter pursuant to 33 U.S.C. § 1319(g)(2)(A).

REQUEST FOR SETTLEMENT CONFERENCE

Respondent requests a settlement conference with Complainant be scheduled in this matter.

GOLDSTEIN, HESLOP, STEELE,
CLAPPER & OSWALT

By 

Daniel L. Stants, Esquire
Attorney for Respondent
I.D. No. 200034

414 N. Logan Boulevard
Altoona, PA 16602
(814) 946-4391

DATED: 23 Jul 10