

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

In The Matter of:

Borough of Huntingdon
530 Washington Street
Huntingdon, PA 16652

Respondent.

:
: Proceeding to Assess Class I
: Administrative Penalty Under
: Section 309(g) of the Clean
: Water Act
:
: EPA Docket No. CWA-03-2010-0280
:
: ANSWER TO ADMINISTRATIVE PENALTY
: COMPLAINT and NOTICE OF
: OPPORTUNITY TO REQUEST HEARING

I. STATUTORY AUTHORITY

1. After reasonable investigation, the Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 1. and therefore, denies the allegations thereof.

2.-8. The allegations of Paragraphs 2 through 8 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

II. FINDINGS OF FACT

9. The allegation in Paragraph 9 is a conclusion of law to which no response is necessary. To the extent an answer may be appropriate, the allegation is denied.

10. ADMITTED IN PART AND DENIED IN PART. It is admitted that the Pennsylvania Department of Environmental Protection ("DEP") issued the Respondent an NPDES Permit No. PA 0026191 (the "Permit"), on February 7, 2008 with the permit becoming effective on March 1, 2008. However, in that regard, the permit was appealed by

the Respondent and, as a result, an amended permit was issued on January 16, 2009 with an effective date on March 1, 2008.

11. The allegation in Paragraph 11 is a conclusion of law to which no response is necessary. To the extent an answer may be appropriate, the allegation is denied.

12. DENIED. It is denied that the Respondent's NPDES permit is set to expire on February 13, 2013. To the contrary, the aforesaid permit expires at midnight on February 28, 2013.

III. FINDINGS OF VIOLATION

Count I – Failure to Submit Reevaluation of Local Limits

13. ADMITTED.

14. ADMITTED.

15. ADMITTED.

16. The allegations of Paragraph 16 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

17. The allegations of Paragraph 17 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied. The Respondent avers, to the contrary, that a civil penalty in an amount not to exceed \$16,000.00 is not necessary or appropriate given the facts and circumstances of this case.

18. ADMITTED.

19. ADMITTED. By way of further answer, the facsimile is attached hereto as Exhibit "A" and made a part hereof. In that regard, the Respondent pointed out to the Complainant that because its sewage treatment plant was undergoing a substantial upgrade in order to comply with the Chesapeake Bay Tributary Strategy, it was believed that it would be more appropriate to redo the local limits based upon the upgraded technologies. In response to the aforesaid facsimile, Stephen Copeland of the Complainant's NPDES Permits Branch replied by way of facsimile dated March 18, 2010 in pertinent part: "In principal, EPA believes that it is prudent to wait until the upgrade/expansion project is completed before the

local limits reevaluation is carried out.” A copy of the aforesaid facsimile is attached hereto as Exhibit “B” and made a part hereof. By way of further response, after reviewing the aforesaid correspondence, James D. Miller, of DEP’s Permitting and Technical Services Section agreed with Complainant’s suggestion to have the Respondent’s NPDES permit amended. A copy of that facsimile dated March 22, 2010 is attached hereto as Exhibit “C” and made a part hereof. However, in a facsimile dated March 30, 2010, the Complainant changed its mind and refused to go along with the postponement described above. The aforesaid facsimile is attached hereto as Exhibit “D” and made a part hereof.

Count II – Failure to Submit Sampling Plan

20. ADMITTED.

21. ADMITTED.

22. ADMITTED. By way of further answer, the Respondent believes, and therefore avers, that there is no legal basis or authority for the Complainant to bring an action against the Respondent for failure to submit a sampling plan.

23. DENIED. The allegations of Paragraph 23 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

24. The allegations of Paragraph 24 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied. The Respondent avers, to the contrary, that a civil penalty in the amount not to exceed \$11,000.00 is not warranted given the facts and circumstances of this case.

25. ADMITTED. By way of further answer, the response to Paragraph 19, supra, is incorporated herein by reference the same as if fully set forth at length.

26. ADMITTED. By way of further answer, the response to Paragraph 19, supra, is incorporated herein by reference the same as if fully set forth at length.

IV. PROPOSED CIVIL PENALTY

27. The allegations of Paragraph 27 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

28. DENIED. After reasonable investigation, the Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 28 and, therefore, denies the allegations thereof.

29. The allegations of Paragraph 29 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

30. The allegations of Paragraph 30 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

V. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

31.-36. The averments of Paragraphs 31 through 36 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

37. The allegations of Paragraph 37 are legal conclusions to which no response is necessary. To the extent that a response may be appropriate, the Respondent hereby requests a hearing on the proposed civil penalty associated with the subject Complaint.

38.-41. The allegations in Paragraphs 38 through 41 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the allegations are denied.

VI. SETTLEMENT CONFERENCE

42. After reasonable investigation, the Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in Paragraph 42 and therefore, denies the allegations thereof. By way of further answer, the Respondent requests a settlement conference to discuss the allegations to the Complaint to see if a suitable settlement can be negotiated.

43. The allegations contained in Paragraph 43 are legal conclusions to which no response is necessary.

44. After reasonable investigation, the Respondent does not have sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 44.

45. The allegations contained in Paragraph 45 are legal conclusions to which no response is necessary.

46. The Respondent has, by its attorney, contacted Philip Yeany regarding a settlement conference.

47. The Respondent has, by its attorney, contacted Philip Yeany regarding a settlement conference.

48. The allegations contained in Paragraph 48 are legal conclusions to which no response is necessary.

VII. QUICK RESOLUTION

49.-59. The averments contained in Paragraphs 49 through 59 are legal conclusions to which no response is necessary. To the extent an answer may be appropriate, the Respondent does not wish to resolve this proceeding by paying the specified penalty proposed in the Complaint.

VIII. PUBLIC PARTICIPATION

60.-62. The averments contained in Paragraphs 60 through 62 are legal conclusions to which no response is necessary.

OPPOSITION TO PROPOSED CIVIL PENALTY

The Complainant 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 deadline specified by its NPDES permit. Respondent opposes to the civil penalty because:

1. The Respondent's Pretreatment Program Administrator was off work for a period of nine (9) months because of health issues which related to the death of his spouse. As a result, the deadlines for the submission of reevaluation of Local Limits and Sampling Plan were missed;
2. During this period, remaining employees of the Respondent were in the process of doing significant amounts of other types of sampling in order to fully prepare for the pilot testing and design of its upgraded sewer facilities;
3. Through correspondence, and numerous telephone calls, the Complainant never informed the Respondent of any alleged filing deficiency. A perfect opportunity for the Complainant to do so would have been during review of Respondent's 2008 Annual Report which was dated March 10, 2009. The Complainant failed to respond until January 10, 2010, and when it did by letter dated January 25, 2010, the Complainant informed the Respondent that it received a Category 1 overall rating of 98.1%. The letter continued: "The Borough is congratulated for this achievement." A copy of the aforesaid letter is attached hereto as Exhibit "E" and made a part hereof;
4. Respondent believes, and therefore avers, that if the Complainant had notified the Respondent in a timely manner after its most recent review that it was in noncompliance, the Respondent would have had more than sufficient time to meet any and all deadlines;

5. A civil penalty will not have any significant benefit for the Complainant but will be extremely detrimental and harmful to Respondent's citizens because of the adverse economic impact of such a penalty;
6. The civil penalty proposed by the Complainant is administrative in nature. Here, there has been no damage to the environment. As such, given the facts and circumstances here any such civil penalty is excessive and not warranted;
7. Upon receipt of notification from the Complainant, the Respondent immediately took the necessary steps to submit the Sampling Plan and has now received approval of the same.

REQUEST FOR HEARING

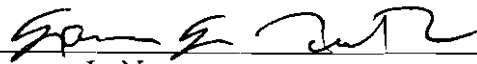
Respondent requests that a hearing be scheduled pursuant to 33 U.S.C. § 1319(g)(2)(A).

REQUEST FOR SETTLEMENT CONFERENCE

Respondent requests that a settlement conference be scheduled with the Complainant as soon as practical.

Respectfully submitted,

Dated: July 27, 2010



Lawrence L. Newton
504 Penn Street
Huntingdon, PA 16652
(814) 643-3820

Attorney for Respondent

March 17, 2010

Dear Mr. Copeland,

We understand that during your recent discussions with Mr. Ron Taylor, Huntingdon's pretreatment program administrator, the subject of our local limits sampling plan was discussed and we had agreed to submit a plan as soon as possible. After discussing this with our engineer who advised us that since our plant is being upgraded at this time, there is the strong possibility that the local limits would have to be redone as a result of the change in processes to be protected. Our upgraded plant will use denitrification filtration and produce Class A ATAD sludge.

We respectfully request that we be permitted to delay our sampling and local limits derivation until after the upgraded plant is in operation (scheduled for March 31, 2011). Please advise if this request can be granted.

We would like to inform you at this time that our new Pretreatment Coordinator will be Richard S. King. His email address is rking@huntingdonboro.com.

If you have any further questions or need additional information please contact Jay O. Coffman Jr., Supervisor Huntingdon Wastewater Treatment Facility.

Thank you.

Jay O. Coffman, Jr.
Supervisor

Exhibit "A"

Oak Coffman

From: Copeland.Stephen@epamail.epa.gov
Sent: Thursday, March 18, 2010 3:30 PM
To: Oak Coffman
Cc: Graham.Allison@epamail.epa.gov
Subject: Re: Pretreatment Coordinator



Mr. Stephen
Copeland EPA.doc

Oak - Thank you for the quick submittal of the letter. A few things need to be clarified:

Not only is the Headworks Sampling Plan late, but the Headworks Analysis/Local Limits Reevaluation was due by February 7, 2009. EPA is not the party that can grant a delay in submitting the required elements. Since these requirements were part of the NPDES permit language issued by PADEP, it is up to them to issue an amendment to the NPDES permit. I strongly recommend that you request this delay - in the form of an amendment to the Borough's permit. We have established schedules for these activities to require submission of the Sampling Plan 3 months after the upgrade/expansion has been completed, and submission of the local limits reevaluation within 1 year after the upgrade/expansion has been completed. In principle, EPA believes that it is prudent to wait until the upgrade/expansion project is completed before the local limits reevaluation is carried out.

Steve Copeland
NPDES Permits Branch (3WP41)
Office of Permits and Enforcement
Water Protection Division
Phone - 215/814-5792
e-mail:- copeland.stephen@epa.gov

"Oak Coffman"
<ocoffman@huntingdonboro.com>

03/17/2010 02:30
PM

To
Stephen Copeland/R3/USEPA/US@EPA
cc
"Ken Myers \ (E-mail\)"
<kmyers@huntingdonboro.com>, "Ray
Myers \ (E-mail\)"
<rmyers@cet-inc.com>, "Rick King
\ (E-mail\)"
<rking@huntingdonboro.com>
Subject
Pretreatment Coordinator

Exhibit "B"

Steve,

"Miller, James
D."
<jamesmille@stat
e.pa.us>

03/22/2010 12:01
PM

To
Stephen Copeland/R3/USEPA/US@EPA
cc

'Oak Coffman'
<ocoffman@huntingdonboro.com>,
"Bebenek, Maria"
<mbebenek@state.pa.us>

Subject
Huntingdon Borough-NPDES
PA0026191

Steve,

I thought it would be best to confirm our conversation in writing since I really don't plan on being around to do the next NPDES renewal.

In essence, the DEP will amend Huntingdon's NPDES permit to require submission of the Sampling Plan 3 months after the upgrade/expansion has been completed, and submission of the local limits reevaluation within 1 year after the upgrade/expansion has been completed. These changes will occur in the permit's Part C.II.E titled Headworks Analysis. Based on the current NPDES permit construction schedule the reevaluation would then be due by September 30, 2012.

In addition, since the reevaluation will occur during the same time frame as the next NPDES permit renewal review process (due September 1, 2012), it is agreed that the next NPDES permit will revise the "Headworks Analysis" requirement so not to repeat the local limits reevaluation process for the next cycle.

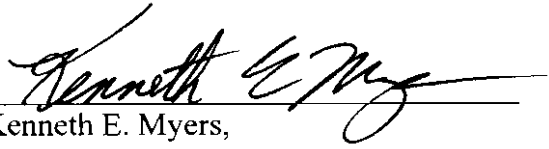
Please confirm this to be your understanding of our conversation and thanks for your time and consideration.

James D Miller | Permitting and Technical Services Section
Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue | Harrisburg, PA 17110
Phone: 717.705.4825 | Fax: 717.705.4760
www.depweb.state.pa.us

Exhibit "C"

VERIFICATION

I, KENNETH E. MYERS, BOROUGH MANAGER, verify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.


Kenneth E. Myers,
Borough Manager

Date: 11/27/2010