

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

FILED
2019 MAR -4 PM 12:46

In the Matter of:

Ramah Water and Sanitation District,
a New Mexico Corporation

Respondent

§ Docket No. CWA-06-2019-1761
§
§ Proceeding to Assess a Class I
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
§
§ ADMINISTRATIVE COMPLAINT
§

REGIONAL HEARINGS OFFICE
EPA REGION VI

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits,” including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. § 22.50 through 22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Ramah Water and Sanitation District (“Respondent”) is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all relevant times, Respondent owned or operated the Ramah Wastewater Treatment Plant located at 47A N. Bloomfield Road, City of Ramah, McKinley County, New Mexico (“facility”) and was, therefore,

an “owner or operator” within the meaning of 40 C.F.R. § 122.2. The mailing address for Respondent is Ramah Water and Sanitation District, P.O. Box 416, Ramah, New Mexico.

3. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” with its wastewater discharging into unclassified waters named Togyey Drain, thence to Cebolla Creek, thence to the Rio Pescado, thence to the Zuni River, thence to the Little Colorado River of the Colorado River Basin, which is “a water of the United States,” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (“NPDES”) program.

5. Section 402(a) of the Act, 33 U.S.C. § 1342(a) provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point source to waters of the United States. Any discharge is subject to the specific terms and conditions prescribed in the applicable permit.

6. Respondent applied for and was issued NPDES Permit No. NM0023396 (“Permit”) under Section 402 of the Act, 33 U.S.C. § 1342, that became effective on October 1, 2015. This Permit supersedes and replaces the previous NPDES Permit that was issued on October 30, 2003. At all relevant times, Respondent was authorized to discharge pollutants from the facility’s Outfall 001 to waters of the United States only in compliance with the specific terms and conditions of the Permit.

7. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit (or “Permit”) issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

8. Part 1.A of the Permit (“Monitoring and Reporting Requirements”) requires Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility’s compliance or noncompliance with the permit and applicable regulations. The Permit also requires Respondent to file with EPA and the New Mexico Environment Department (“NMED”) certified Discharge Monitoring Reports (“DMRs”) of the results of the monitoring, and Noncompliance Reports when appropriate.

9. On February 14, 2017, EPA Region 6 issued to Respondent an Administrative Complaint under Section 309(g) of the Act, 33 U.S.C. § 1319(g). This Administrative Complaint proposed to assess a civil penalty because Respondent did not submit DMRs from October 2015 to January 2017 in violation of the Permit conditions. A subsequent Consent Agreement and Final Order, dated April 25, 2017, was issued to Respondent to resolve these violations as alleged in the Complaint. Respondent paid to the United States a civil penalty in the amount of five-thousand dollars (\$5,000.00) to settle these violations, in accordance with 40 C.P.R. § 22.18(c).

10. Respondent continued to not submit complete DMRs from February 2017 through December 2018 in violation of the Permit conditions.

11. On September 10, 2018 EPA Region 6 and NMED conducted a compliance evaluation inspection (“CEI”) of the Ramah wastewater treatment plant. The CEI findings were documented in an EPA report, dated December 19, 2018. In addition to other findings, the CEI report documented Respondent’s failure to historically submit complete DMRs.

12. EPA issued Administrative Order (“AO”) Docket Number CWA-06-2018-1735 to Respondent on March 30, 2018, requiring Respondent to submit DMRs and return to compliance. Respondent did not respond to the AO and has not submitted DMRs as required by the AO.

13. EPA issued AO Docket Number CWA-06-2017-1779 to Respondent on July 31, 2017, requiring Respondent to submit DMRs and return to compliance. Respondent did not respond to the AO and has not submitted DMRs as required by the AO.

14. Based on the foregoing findings and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent violated the Permit by failing to submit DMRs from February 2017 through December 2018.

15. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500 per day.

16. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

17. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(1) and § (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondent a penalty of eighteen thousand dollars (\$18,000.00).

18. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

IV. Failure to File an Answer

19. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

20. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days after service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

21. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

22. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

23. Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Efen Ordoñez (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

24. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

25. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 to preserve the right to a hearing or to pursue other relief.

26. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

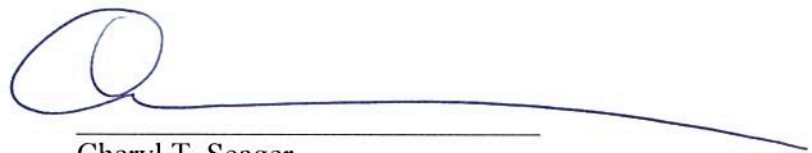
27. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed

penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Damon McElroy, of my staff, at (214) 665-7159.

28. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent’s right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner’s comment was material and was not considered by EPA in the issuance of the CAFO.

29. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent’s continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

3-1-19
Date


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Robert Cain, Board Chairman
Ramah Water and Sanitation Department
P.O. Box 416
Ramah, NM 87321

Copy by Mail: Ms. Shelly Lemon, Chief
Surface Water Quality Bureau
1190 St. Francis Drive
P.O. Box 5469,
Santa Fe, NM 87502

Copy hand-delivered: Mr. Efren Ordoñez (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Date: MAR 04 2019

