



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 02 2016

REPLY TO THE ATTENTION OF:

WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Clark Arneson, City Manager
City of Blaine
10801 Town Square Drive N.E.
Blaine, Minnesota 55449-8101

Re: Administrative Complaint Docket Number **CWA-05-2016-0019**

Dear Mr. Arneson:

Enclosed is a copy of the Administrative Complaint and Notice of Proposed Administrative Penalty Assessment, herein referred to as the Complaint. We have filed this Complaint against you (Respondent) under the authority of Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). In the enclosed document, the U.S. Environmental Protection Agency alleges that the Respondent violated various provisions of the CWA and its implementing regulations. The violation EPA is alleging is specifically set out in Section I of the document.

By law, the Respondent has a right to request a hearing regarding the violations alleged in the Complaint, as well as the proposed administrative civil penalty. Please pay particular attention to Section III, entitled "Notice of Opportunity to Request a Hearing." Note that should Respondent fail to request a hearing within 30 days of your receipt of the Complaint, Respondent will waive his right to such a hearing and the proposed civil penalty may be assessed against Respondent without further proceedings. Respondent has the right to be represented by an attorney, or to represent himself at any stage of these proceedings.

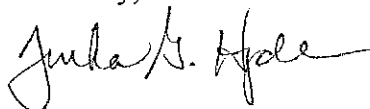
Whether or not a Respondent requests a hearing, we invite you to confer informally with EPA concerning the alleged violations. A Respondent may represent himself or be represented by an attorney at any conference, whether in person or by telephone. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of a settlement.

If a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by the settling Respondent and by the EPA, Region 5. The issuance of such a Consent Agreement shall constitute a waiver by you of your right to a hearing on, and to a judicial appeal of, the proposed civil penalty.

A request for an informal conference does not extend the 30 days by which a Respondent must request or waive a hearing on the proposed penalty assessment. If you have any questions, or wish to discuss the possibility of settlement of this matter, please contact Jeffery Trevino, Associate Regional Counsel, Office of Regional Counsel (C-14J) U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or Kerryann Weaver, Enforcement Officer, Water Division (WW-16J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may reach Mr. Trevino by telephone at 312-886-6729 and Ms. Weaver by telephone at 312-353-9483.

Please send your written response to the address shown in the Complaint.

Sincerely,



Tinka G. Hyde
Director, Water Division

Enclosure

Cc: (w/enclosure)

Andrew Beaudet, U.S. Army Corps of Engineers, St. Paul District
Jim Brist, Minnesota Pollution Control Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

The City of Blaine,
Blaine, Minnesota

Respondent



) Docket No. CWA-05-2016-0019

) Proceeding to Assess a Class II Civil Penalty
) Under Section 309(g) of the Clean Water Act,
) 33 U.S.C. § 1319(g)

COMPLAINT

I. General Allegations

1. This is an administrative action instituted by Region 5 of the United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 309(g) of the Clean Water Act, ("the Act"), 33 U.S.C. § 1319(g), 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 at 40 C.F.R. Part 22. The Administrator of U.S. EPA has delegated the authority to take this action to the Regional Administrator of Region 5 who has delegated this authority to the Director of the Water Division.

2. The Respondent in this matter is the City of Blaine, Blaine, Minnesota.

Aquatore Park

3. On or about July and August of 2014, Respondent was the owner of record for real property located at Aquatore Park, (Sec. 12, T.31N., R 23W., Anoka County, Minnesota (Latitude 45.13831° N, Longitude -93.24151° W)) in Blaine, Minnesota, ("Aquatore Park").

4. On or about July and August of 2014, Respondent, or its contractors, added 4,520 cubic yards of solid waste or municipal waste or rock or sand or cellar dirt or fill material from bulldozers and backhoes, into 1.22 acres of water on Aquatore Park.

5. Respondent was a city.

6. Therefore, Respondent was a municipality as defined at section 502(4) of the Act, 33 U.S.C. § 1362(4).

7. Therefore, the Respondent was a "person" as defined at section 502(6) of the Act, 33 U.S.C. § 1362(5).

8. Respondent added 4,520 cubic yards of solid waste or municipal waste or rock or sand or cellar dirt or fill material into 1.22 acres of waters at Aquatore Park.

9. Therefore, Respondent "discharged" into waters at Aquatore Park as defined at section 502(12) of the Act, 33 U.S.C. § 1362(12).

10. Respondent added 4,520 cubic yards of solid waste or municipal waste or rock or sand or cellar dirt or fill material into waters at Aquatore Park.

11. Therefore, Respondent discharged "pollutants" into waters at Aquatore Park as defined at section 502(6) of the Act, 33 U.S.C. § 1362(6).

12. Respondent added 4,520 cubic yards of solid waste or municipal waste or rock or sand or cellar dirt or fill material into waters at Aquatore Park and used a bulldozer and backhoe, also known as rolling stock.

13. Therefore, Respondent discharged "pollutants" from a "point source" into waters at Aquatore Park as defined at section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. The 1.22 acres of water at Aquatore Park were inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances did support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

15. Therefore, the 1.22 acres of waters at Aquatore Park were “wetlands” as defined at 40 C.F.R. § 232.2.

16. The wetlands were next to, and flowed into, the waters of Springbrook Creek (also known as County Ditch 17).

17. The waters of Springbrook Creek flowed into the waters of the Mississippi River.

18. The Mississippi River was used in interstate and foreign commerce.

19. Therefore, the Mississippi River was “waters of the United States” as defined at 40 C.F.R. § 232.2.

20. The waters of Springbrook Creek were a “tributary” to the waters of the Mississippi River.

21. Therefore, the waters of Springbrook Creek were “waters of the United States” as defined at 40 C.F.R. § 232.2.

22. The waters of the wetlands were “adjacent” to and a “tributary” of Springbrook Creek as defined at 40 C.F.R. § 232.2.

23. Therefore, the waters of the wetlands were “waters of the United States” as defined at 40 C.F.R. § 232.2.

24. Therefore, the wetlands, Springbrook Creek, and the Mississippi River, were “navigable waters” as defined at section 502(7) of the Act, 33 U.S.C. § 1362(7).

25. Respondent discharged pollutants from a point source into navigable waters without a Dredge and Fill Permit as required by section 404(b) of the Act, 33 U.S.C. § 1344(b).

26. Therefore, Respondent discharged pollutants from a point source into navigable waters in violation of section 301 of the Act, 33 U.S.C. § 1311.

27. Each day the pollutants remained in navigable waters constituted an additional day of violation of Sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344.

The Lexington Athletic Complex

28. On or about July and August of 2014, Respondent was the owner of record for real property located at the Lexington Athletic Complex (Sec. 32, T.31N., R 23W., Anoka County, Minnesota, (Latitude 45.18748° N, Longitude -93.16018° W)), in Blaine, Minnesota, (“Lexington”).

29. On or about July and August of 2014, Respondent, or its contractors, added 7,165 cubic yards of rock or sand or cellar dirt or fill material from bulldozers and backhoes into 1.11 acres of waters at the Lexington Athletic Complex.

30. Respondent added 7,165 cubic yards of rock or sand or cellar dirt or fill material into waters at the Lexington Athletic Complex.

31. Therefore, Respondent “discharged” into waters at the Lexington Athletic Complex as defined at section 502(12) of the Act, 33 U.S.C. § 1362(12).

32. Respondent added 7,165 cubic yards of rock or sand or cellar dirt or fill material into waters at the Lexington Athletic Complex.

33. Therefore, Respondent discharged “pollutants” into waters at the Lexington Athletic Complex as defined at section 502(6) of the Act, 33 U.S.C. § 1362(6).

34. Respondent added 7,165 cubic yards of rock or sand or cellar dirt or fill material into waters at the Lexington Athletic Complex and used a bulldozer and backhoe, also known as rolling stock.

35. Therefore, Respondent discharged pollutants from a “point source” into waters at the Lexington Athletic Complex as defined at section 502(14) of the Act, 33 U.S.C. § 1362(14).

36. The 1.11 acres of water at the Lexington Athletic Complex were inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances did support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

37. Therefore, the 1.11 acres of waters at the Lexington Athletic Complex were “wetlands” as defined at 40 C.F.R. § 232.2.

38. The waters of the wetlands were adjacent, and flowed into, the waters of a private ditch that flowed into Anoka County Ditch No. 53-62, Branch 2, Lateral Peebles.

39. The waters of Anoka County Ditch No. 53-62, Branch 2, Lateral Peebles, flowed into Anoka County Ditch No. 53-62, Branch 2, Lateral 3.

40. The waters of Anoka County Ditch No. 53-62, Branch 2, Lateral 3 flowed into Anoka County Ditch No. 53-62, Branch 2.

41. The waters of Anoka County Ditch No. 53-62, Branch 2 flowed into the waters of the Anoka County Ditch No. 53-62 Main Branch.

42. The waters of Anoka County Ditch No. 53-62 flowed into Rice Creek.

43. The waters of Rice Creek flowed into the waters of the Mississippi River

44. The Mississippi River was used in interstate and foreign commerce.

45. Therefore, the Mississippi River was “waters of the United States” as defined at 40 C.F.R. § 232.2.

46. The waters of Rice Creek were a "tributary" to the waters of the Mississippi River.

47. Therefore, the waters of Rice Creek were "waters of the United States" as defined at 40 C.F.R. § 232.2.

48. The waters of Anoka County Ditch No. 53-62 Main Branch were a "tributary" to the waters of Rice Creek.

49. Therefore, the waters of County Ditch No. 53-62 Main Branch, were "waters of the United States" as defined at 40 C.F.R. § 232.2.

50. The waters of Anoka County Ditch No. 53-62, Branch 2 were a "tributary" to the waters of Anoka County Ditch No. 53-62 Main Branch.

51. Therefore, the waters of Anoka County Ditch No. 53-62, Branch 2, were "waters of the United States" as defined at 40 C.F.R. § 232.2.

52. The waters of Anoka County Ditch No. 53-62, Branch 2, Lateral 3 were a "tributary" to the waters of Anoka County Ditch No. 53-62 Branch 2.

53. Therefore, the waters of Anoka County Ditch No. 53-62, Branch 2, Lateral 3 were "waters of the United States" as defined at 40 C.F.R. § 232.2.

54. The waters of Anoka County Ditch No. 53-62, Branch 2, Lateral Peebles were a "tributary" to the waters of Anoka County Ditch No. 53-62 Branch 2, Lateral 3.

55. Therefore, the waters of Anoka County Ditch No. 53-62, Branch 2, Lateral Peebles were "waters of the United States" as defined at 40 C.F.R. § 232.2.

56. The waters of the private ditch were a "tributary" to the waters of Anoka County Ditch No. 53-62, Branch 2, Lateral Peebles.

57. Therefore, the waters of the private ditch were “waters of the United States” as defined at 40 C.F.R. § 232.2.

58. The waters of the wetlands were next to, and flowed into, the waters of the private ditch.

59. Therefore, the waters of the wetlands were “adjacent” to, and a “tributary” of, the waters of the private ditch as defined at 40 C.F.R. § 232.2.

60. Therefore, the waters of the wetlands were “waters of the United States” as defined at 40 C.F.R. § 232.2.

61. Therefore, the waters of the wetlands, the waters of the private ditch, the waters of the Anoka County Ditch No. 53-62, Branch 2, Lateral 3, the waters of the Anoka County Ditch No. 53-62, Branch 2, the Anoka County Ditch No. 53-62 Main Branch; the waters of Rice Creek, and the waters of the Mississippi River, were “navigable waters” as defined at section 502(7) of the Act, 33 U.S.C. § 1362(7).

62. Respondent discharged pollutants from a point source into navigable waters without a Dredge and Fill Permit as required by section 404(b) of the Act, 33 U.S.C. § 1344(b).

63. Therefore, Respondent discharged pollutants from a point source into navigable waters in violation of section 301 of the Act, 33 U.S.C. § 1311.

64. Each day the pollutants remained in navigable waters constituted an additional day of violation of Sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344.

II. Notice of Proposed Civil Penalty

Pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2), the Administrator may assess a Class II civil penalty not to exceed \$16,000.00 per day for each day during which the

violation continues, to a maximum amount of \$187,500.00 for violations of Section 301 of the Act, 33 U.S.C. § 1311, after December 6, 2013. Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondents' ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA proposes a civil penalty of **\$90,000.00**.

Respondent shall pay this penalty by certified or cashier's check identifying the case name and docket number on the check and made payable to "Treasurer, the United States of America." Respondent shall send the check, with a transmittal letter identifying the case name and docket number to:

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

Copies of the transmittal letter and check shall be sent to:

Kerryann Weaver (WW-16J)
U.S. Environmental Protection Agency, Water Division
77 West Jackson Boulevard
Chicago, IL 60604-3590;

and,

Jeffery M. Trevino (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

III. Notice of Opportunity to Request a Hearing

As provided in Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and Section 22.15 of the Consolidated Rules of Practice, 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any material fact alleged in this Complaint and to contest the appropriateness of the amount of the proposed penalty. To request a hearing, a Respondent must specifically make such a request in its Answer, which is discussed below.

Any hearing a Respondent requests regarding this Complaint will be held and conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which accompanies this Complaint.

IV. Answer

If Respondent contests any material fact alleged in this Complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, that Respondent must file the original and one copy of a written Answer to this Complaint with the Regional Hearing Clerk (E-19J), Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590 and U.S. Environmental Protection Agency Headquarters Hearing Clerk (1900L), Office of Administrative Law Judges, 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days after service of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included, except when a time period expires on such, in which case the time period shall be extended to the next business day.

Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint or state clearly it has no knowledge of a particular factual allegation. Where Respondent states it has no knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's Answer must also state:

- a. The circumstances or arguments Respondent alleges constitute grounds of defense;
- b. The facts Respondent disputes;
- c. The basis for opposing the proposed penalty; and,
- d. Whether Respondent requests a hearing.

Respondent's failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation as to that Respondent.

A copy of the Answer and all subsequent documents filed in this action must be sent to Jeffery M. Trevino, Associate Regional Counsel, (C-14J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590, who may be telephoned at (312) 886-6729.

If Respondent fails to file a written Answer within 30 days after service of this Complaint, the Presiding Officer may issue a Default Order, after motion, pursuant to 40 C.F.R. § 22.17. Default by a Respondent constitutes an admission of all factual allegations made in the Complaint and a waiver of that Respondent's right to contest the factual allegations made in the Complaint. The Defaulting Respondent must pay any penalty assessed in a Default Order without further proceedings 30 days after the Order becomes a Final Order of the Administrator of U.S. EPA under 40 C.F.R. § 22.27(c). Respondent's failure to pay the entire proposed

penalty assessed by the Default Order by its due date may result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs of collection proceedings, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).

If Respondent requests a hearing on the Complaint, members of the public who have exercised their right to comment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If a hearing is not held, U.S. EPA may issue a Final Order assessing penalties and only members of the public who commented on the proposed penalty assessment during the 40 day period following issuance of the public notice will have an additional 30 days to petition U.S. EPA to set aside the Final Order assessing penalties and to hold a hearing thereon. U.S. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by U.S. EPA in the issuance of the Final Order assessing penalties.

V. Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please write to Kerryann Weaver, Enforcement Officer, Water Division, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (WW-16J), Chicago, IL 60604-3590, or telephone her at (312) 353-9483.

Respondent's request for an informal settlement conference will not extend the 30 day period for a Respondent to submit a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. U.S. EPA encourages all parties against whom a penalty is proposed to pursue

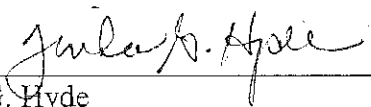
settlement through an informal conference. U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference will be embodied in a Consent Agreement and Final Order. Respondent's consent to a Consent Agreement and Final Order shall constitute a waiver of the right to request a hearing on any matter stipulated to therein.

VI. Notice to the State and Public

U.S. EPA has consulted with the State of Minnesota regarding this action by mailing a copy of this Complaint to Jim Brist, 401 Coordinator, 520 Lafayette Road North, St. Paul, Minnesota 55155, and by offering the State of Minnesota an opportunity to comment on the proposed penalty. U.S. EPA, contemporaneously with the issuance of this Complaint, caused a public notice to be published on the U.S. EPA website regarding this action.

VII. Continuing Obligation to Comply

Neither assessment nor payment of a penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect a Respondent's continuing obligation to comply with the Act, with any other Federal, State or local law or regulation and with any Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a).



Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection Agency
Region 5

8/2/16

Date

In The Matter Of: The City of Blaine, Blaine, Minnesota.
Docket Number: **CWA-05-2016-0019**

CERTIFICATE OF SERVICE

I certify that today I filed with the Regional Hearing Clerk, Region 5, U.S, Environmental Protection Agency, 77 West Jackson Boulevard (Mail Code (C-19J)), Chicago, Illinois, 60604-3590, the original and one copy of the COMPLAINT for this civil administrative action, and today served the following parties in the following manners at the following addresses, a true and correct copy of the COMPLAINT:

Clark Arneson, City of Manager
The City of Blaine
10801 Town Square Drive N.E.
Blaine, Minnesota 55449-8101

Copy by U.S. Certified Mail
Return Receipt Requested No.

7011 1150 0000 2640 6769

Patrick J. Sweeney
Counsel to the City of Blaine


Copy by Electronic Mail to
psweeney@eckbergglammers.com

Jeffery M. Trevino
Counsel to Complainant

Copy by Electronic Mail to
trevino.jeffery@epa.gov

Ann Coyle
Regional Judicial Officer

Copy by Electronic Mail to
coyle.ann@epa.gov


Kerryann Weaver
Life Scientist
Region 5
U.S. Environmental Protection Agency

8/2/2016
Dated