



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

JUL 30 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7005 1820 0003 7458 8187

Mr. Bob Horacek, City Manager
City of Grants
P.O. Box 879
Grants, NM 87020

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number: CWA-06-2013-1860
Facility Number: NMU001835

Dear Mr. Horacek:

Enclosed is an Administrative Complaint (Complaint) issued to the City of Grants for violation of Section 301(a) of the Clean Water Act (CWA)(33 U.S.C. § 1251 et seq.). The violation was identified during an inspection conducted by the New Mexico Environment Department and a review of information submitted in response to an Information Request issued to City of Grants by the Environmental Protection Agency (EPA). The violation alleged is for unauthorized discharges to waters of the United States.

You, as the representative of City of Grants, have the right to request a hearing regarding the violation alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. Note that should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$13,000.00 may be assessed against you without further proceedings.

Whether or not you request a hearing, we invite you to confer informally with EPA. You may represent City of Grants, 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 settlement as a result of an informal conference.

Re: Administrative Complaint
City of Grants

2

EPA is committed to ensuring compliance with the requirements of the CWA, and my staff will assist you in any way possible. If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Mr. Joshua Waldmeier, of my staff, at (214) 665- 8064.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins". The signature is written in a cursive style with a long horizontal stroke at the end.

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: w/Complaint-Regional Hearing Clerk (6RC-D)

Mr. Bruce Yurdin, Acting Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ Docket No. CWA-06-2013-1860
	§
City of Grants,	§ Proceeding to Assess a Class I
a New Mexico Municipality,	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
Facility No. NMU001835	§

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 (“the Act”), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further 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 Procedure 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. City of Grants (“Respondent”) is a municipality chartered under the laws of the State of New Mexico, and as such, 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 a municipal wastewater treatment facility located in the City of Grants, Cibola County, New Mexico (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a “point source” of a “discharge” of “pollutants” with its municipal wastewater to the receiving waters of the Rio San Jose, which is considered 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. 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 issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. 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 sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. At all times relevant, Respondent was not covered by an NPDES permit and operated as a "no discharge" facility in that normal operations did not result in discharges to waters of the United States, and was, therefore, not authorized to discharge pollutants from the facility to waters of the United States.

8. On January 7, 2013, the facility was inspected by the New Mexico Environment Department. As a result of the inspection, it was found that the main sewage line conveying untreated municipal wastewater to the treatment facility failed, resulting in an unauthorized discharge of untreated municipal wastewater onto an area of land contained by a berm. The untreated wastewater over-topped the berm and exited the containment area, resulting in an unauthorized discharge of untreated municipal wastewater to waters of the United States on December 25, 2013.

9. As a result of the inspection, EPA issued a Cease and Desist Administrative Order, Docket Number CWA-06-2013-1741, on January 11, 2013, requesting information regarding a sanitary sewer overflow on December 25, 2013. On March 21, 2013, EPA issued a 308 Information Request requiring Respondent to identify all sanitary sewer overflows which resulted in a discharge to waters of the United States, from February 1, 2008 to January 31, 2013.

10. In response to the March 21, 2013, Information Request, Respondent submitted information to EPA identifying three sanitary sewer overflows on January 12, 2011, February 2, 2012 and December 25, 2013. The three sanitary sewer overflows are unauthorized discharges.

11. Each of the three unauthorized discharges specified in paragraph 10 resulted in unauthorized discharges of pollutants to the Rio San Jose, a water of the United States, and was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

12. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), 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.

13. EPA has notified the New Mexico Environment Department of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against the Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

14. 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

15. Based on the foregoing Findings, and pursuant to the authority of Section 309(g)(1) and Section(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 the Respondent a civil penalty of thirteen thousand dollars (\$13,000.00).

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

17. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act. However, pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554, and Respondent waives this right unless Respondent in its Answer requests a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

18. 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 the Respondent requests a hearing as discussed below.

19. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of 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).

20. 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 the Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

21. 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

Respondent shall also send a copy of its Answer to this Complaint to the following

EPA attorney assigned to this case:

Efren Ordoñez (6RC-EW)
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

22. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of the 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

23. 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, including 40 C.F.R. § 22.50 through § 22.52.

24. Any request for hearing should be included in the 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 in order to preserve the right to a hearing or to pursue other relief.

25. 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

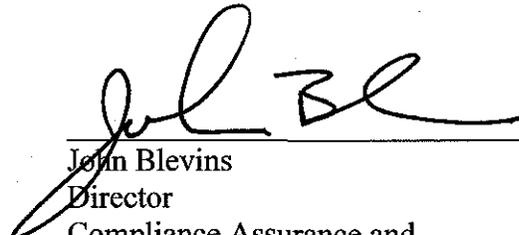
26. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed 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. Joshua Waldmeier at (214) 665-8064.

27. 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 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.

28. 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 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.

7.30.13

Date



John Blevins
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 Ave., Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Bob Horacek, City Manager
City of Grants
P.O. Box 879
Grants, NM 87020

Copy: Mr. Bruce Yurdin, Acting Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

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

Dated: _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7005 1820 0003 7458 8194

Mr. Bruce Yurdin, Acting Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502

Re: Notice of Proposed Administrative Penalty Assessment
Docket Number: CWA-06-2013-1860
Facility Number: NMU001835

Dear Mr. Yurdin:

Enclosed is a copy of the Administrative Complaint (Complaint) which the Environmental Protection Agency (EPA) is issuing to City of Grants (Respondent), pursuant to Section 309(g) of the Clean Water Act (CWA) 33 U.S.C. § 1319(g). EPA is issuing the Complaint to administratively assess a Class I civil penalty of \$13,000.00 against Respondent for violation of the CWA. Because the violation has occurred in the State of New Mexico, I am offering you an opportunity to confer with us regarding the proposed penalty assessment.

You may request a conference within two weeks of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed penalty assessment. If you wish to request a conference or if you have any comments or questions regarding the matter, please contact Mr. Joshua Waldmeier, of my staff, at (214) 665-8064.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins", written over a horizontal line.

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure