

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

| | | |
|---|---|-----------------------------|
| IN THE MATTER OF |) | |
| |) | Docket No. CWA-07-2016-0001 |
| THE CITY OF CRYSTAL CITY, |) | |
| MISSOURI |) | |
| Respondent |) | COMPLAINT AND |
| |) | CONSENT AGREEMENT/ |
| |) | FINAL ORDER |
| Proceedings under Section 309(g) of the |) | |
| Clean Water Act, 33 U.S.C. § 1319(g) |) | |
| _____ |) | |

COMPLAINT

Preliminary Statement

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 (“EPA”) and Respondent, the City of Crystal City, Missouri, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent, the City of Crystal City, Missouri, have violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the “Complainant”).

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that Section.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA.

9. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding dated October 30, 1974. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA General Allegations

10. The City of Crystal City is a political subdivision of the state organized under the laws of Missouri, and as such is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all relevant times, the City has jointly owned and operated a wastewater treatment facility (“WWTF”) and owned and operated the City’s associated sewer collection and transmission systems, which receive and treat wastewater from residential, commercial, and industrial connections within Crystal City, Missouri, and which together are a Publicly Owned Treatment Works (“POTW”), as defined by 40 C.F.R. § 403.3(q). The City’s WWTF is operated pursuant to City ordinance by the Festus-Crystal City Sewage Treatment Commission.

12. The City’s WWTF discharges to Platin Creek, which is a “navigable water” and a “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

13. Effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 502(6).

14. The City's POTW is a "point source" that "discharges pollutants" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

15. The City's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. On February 1, 2008, MDNR granted NPDES Permit No. MO-0080632 (hereafter NPDES Permit), to the Festus-Crystal City Sewage Treatment Commission for discharges from the WWTF to Platin Creek, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The NPDES Permit expired January 31, 2013 and it is administratively extended pursuant to 10 C.S.R. 20-6(10(E)).

17. On March 10 through 14, 2014, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of the City's POTW, including the City's collection and transmission systems, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its NPDES permit and the CWA.

18. During the EPA inspection described in Paragraph 17 above, the inspector reviewed the City's records related to the wastewater collection and transmission systems and conducted a visual inspection of two of the City's lift stations.

19. On or about July 15, 2014, the EPA sent the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. On or about July 29, 2014, the City submitted a response to the Request for Information.

20. The City submitted to the EPA Sanitary Sewer Overflow Reports for January 1, 2012 through July 15, 2014, as part of the City's response to the Request for Information described in Paragraph 19. The City also submitted to EPA SSO Reports for January 1, 2013 through March 14, 2014, as part of the inspection described in Paragraph 17.

EPA's Specific Allegations

21. The facts stated in Paragraphs 10 through 20, above, are herein incorporated.

Unpermitted Discharges

22. The NPDES Permit authorizes the discharge of pollutants only from a specified point source, identified in the NPDES Permits as "Outfall 001," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permit.

23. Within the past five years, the City has discharged untreated wastewater from lift stations and/or other locations within the City's collection and transmission systems, also known as SSOs. None of the locations of these discharges are the Outfall 001 identified in the NPDES Permit.

24. Upon review of the City's responses to the Request for Information described in Paragraph 20, including the reports submitted to MDNR, the City has discharged pollutants from the City's collection and transmission systems at locations other than Outfall 001 on at least 3 occasions between March 2010 and March 2014. These discharges are not permitted or otherwise authorized by the CWA.

25. The City's unpermitted discharges from its collection and transmission system described above occurred April 24, 2013, May 6, 2013, and February 25, 2014, and have been attributed to flooding of Plattin Creek with resulting infiltration into sewer manholes and/or rags or other debris introduced into the sewer by users of the 8 inch sewer line located approximately at County Road, North of VFW Drive, Crystal City, Missouri.

26. The SSOs described in Paragraphs 23 through 25, discharged untreated wastewater into Plattin Creek.

27. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

CONSENT AGREEMENT

28. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

29. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

30. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

31. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

32. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

33. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

34. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or

entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

35. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with Administrative Order for Compliance on Consent, EPA Docket No. CWA-07-2015-0041, to achieve compliance with all requirements of its NPDES Permit and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

Penalty Payment

36. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Six Thousand Five Hundred Dollars (\$6,500)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

37. The payment of penalties must reference docket number "CWA-07-2016-0001" and be remitted using one of the payment methods specified in Appendix A to this Order.

38. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

39. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

40. Respondent understands that, pursuant to 40 C.F.R. § 13.18, its failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

41. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

42. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 35 of this Consent Agreement/Final Order.

43. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

44. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

45. With respect to matters not addressed in this Consent Agreement/Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

46. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

47. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the Regional Judicial Officer and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

48. The State of Missouri has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

49. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

50. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

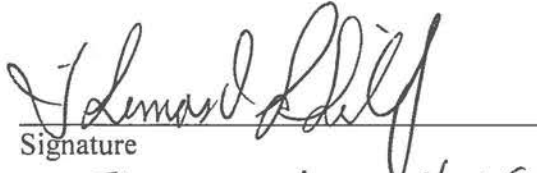


For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this _____ day of _____, 2015.

Karen A. Flourney
Director
Water, Wetlands and Pesticides Division

Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

For the Respondent, City of Crystal City, Missouri:


Signature _____ Date 11-16-15

Name _____

Title _____

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Boromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested, to:

The Honorable Thomas V. Schilly
Mayor, City of Crystal City
130 Mississippi Avenue
Crystal City, Missouri 63019,

and by first class mail to:

Paul Dickerson, or his successor
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

Date

Signature

Appendix A
Penalty Payment Information for Consent Agreement and Final Order

Complete information regarding making payments to the US EPA may be found at:
<http://www.epa.gov/financial/makepayment>

For your convenience, the following is a summary of the acceptable payment methods for the civil penalty required to be paid pursuant to the Consent Agreement and Final Order:

1. **Cashier's or Certified Check:** If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

US Postal Service:

U.S. Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, MO 63197-9000

Common Carriers (Fedex, DHL, UPS):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

2. **Wire Transfer:** If payment is being made by wire transfer, the wire transfer must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental
Protection Agency

3. **Automated Clearing House (ACH) or Remittance Express (REX):** If using ACH or REX, payments must indicate the name and docket number of the case and can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format
Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
US Treasury Contact Information:
John Schmid: 202-874-7026
Remittance Express (REX): 1-866-234-5681

4. **On-line Payment:** On-Line Payment is available through the Department of Treasury, and can be accessed using the information below:

www.pay.gov

Enter “sfo 1.1” (without quotation marks) in the SEARCH PUBLIC FORMS field.

You should see the following information as your search result:

*Form Number: **SFO Form Number 1.1***

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments.

Click the link to open the form, complete the required fields, then click SUBMIT DATA button at the bottom of the form.

Payment Tips

To ensure proper credit please include the following information on your payment:

- Company/remitter's name (as it appears on EPA document)
- Complete address, including city, state, zip
- Remitter's point of contact person and phone number
- EPA document number (case, contract, grant, purchase order, etc.)—NOT the remitter's number
- EPA contact name and phone number, if available
- Reason for payment

Note: It is important to direct payment to the appropriate EPA finance center to ensure your remittance is credited to the proper account. Each finance center has its own unique agency location code, and each U.S. depository has a unique bank routing number.