

US EPA ARCHIVE DOCUMENT

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

IN THE MATTER OF ) Docket No. CWA 07-2014-0068  
)  
City of Jefferson, Missouri )  
)  
A Municipality )  
) COMPLAINT AND CONSENT  
) AGREEMENT / FINAL ORDER  
)  
)  
Proceedings under Section 309(g) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

**COMPLAINT**

Jurisdiction

1. This Administrative Complaint (“Complaint”) has been filed under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), pursuant to Section 309(g) of 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) alleges that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region 7, is the Director of Region 7’s Water, Wetlands and Pesticides Division.

4. The City of Jefferson, Missouri (hereafter “Respondent” or “City”), is a political subdivision of the state of Missouri and a “municipality” within the meaning of 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works (“POTW”) that treats domestic, commercial, and industrial wastewater.

Statutory and Regulatory Framework of Section 301 of the CWA

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342.

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. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

8. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for various categories of stormwater discharges. Section 402(p)(2) requires permits for five categories of stormwater discharges. Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), requires permitting for additional categories of stormwater discharges based on the results of studies conducted pursuant to Section 402(p)(5) of the CWA, 33 U.S.C. § 1342(p)(5).

10. Pursuant to Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), EPA promulgated regulations (“Phase II stormwater regulations”) at 40 C.F.R. Part 122 setting forth the additional categories of stormwater discharges to be permitted and the requirements of the Phase II program.

11. 40 C.F.R. § 122.26(a)(9)(i)(A) states that on or after October 1, 1994, for discharges composed entirely of stormwater . . . operators shall be required to obtain a NPDES permit . . . if the discharge is from a small municipal separate storm sewer system (“MS4”) required to be regulated pursuant to 40 C.F.R. § 122.32.

12. 40 C.F.R. § 122.26(b)(8) defines “municipal separate storm sewer” as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- a. owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
  - b. designed or used for collecting or conveying stormwater;
  - c. which is not a combined sewer; and
  - d. which is not part of a Publicly Owned Treatment Works (“POTW”) as defined at 40 C.F.R. § 122.2.
13. 40 C.F.R. § 122.26(b)(16) defines “small municipal separate storm sewer system,” in part, as all separate storm sewers that are:
- a. owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body . . . having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes [ . . . ];
  - b. not defined as “large” or “medium” municipal separate storm sewer systems pursuant to Paragraphs (b)(4) and (b)(7), or designated under Paragraph (a)(1)(v) of this section.
14. 40 C.F.R. § 122.32(a) provides that a small MS4 is regulated if:
- a. the small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census; or
  - b. the MS4 is designated by the NPDES permitting authority, including where the designation is pursuant to §§ 123.35(b)(3) and (b)(4), or is based upon a petition under § 122.26(f).
15. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and MDNR dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

### Factual Background

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

17. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources.

18. The City’s POTW discharges to the Missouri River, which is a “navigable water” and “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.

19. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

20. 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.

21. 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.

22. MDNR issued NPDES Permit No. MO-0094846 to the City for discharges from its POTW to the Missouri River. The NPDES permit (hereafter “NPDES permit”) became effective December 12, 2011, and expires December 11, 2016.

23. In December 2006, an EPA representative performed a Compliance Sampling and Sanitary Sewer Overflow Inspection (hereafter “the EPA POTW inspection”) of the City’s POTW 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.

24. During the EPA inspection described in Paragraph 23 above, the inspector collected wastewater samples from the City’s waste water treatment plant influent and effluent, reviewed the City’s records related to the NPDES permit, and observed the wastewater treatment facility and the receiving stream to which Outfall 001 discharges.

25. On April 24, 2008, September 15, 2009 and September 28, 2011 EPA issued Requests for Information regarding the City’s POTW pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to further evaluate the City’s compliance with its NPDES permit and the CWA.

The City submitted a response to the Requests for Information on May 2, 2008, September 23, 2009, and October 4, 2011, respectively.

26. The City submitted to EPA Sanitary Sewer Overflow/Backup Reports for the years 2008 through 2012, as part of the City's response to the Requests for Information described in Paragraph 25, and any other information the City provided to EPA.

27. Respondent's NPDES permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the NPDES permit as one or more "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permit.

28. Within the past five years, Respondent has discharged untreated wastewater from lift stations and/or other locations within the Respondent's POTW, also known as sanitary sewer overflows ("SSOs"), as described specifically in the table in Appendix A, attached hereto. None of the locations of these discharges are numbered outfalls identified in Respondent's NPDES permit.

29. Of the SSOs described in Paragraph 28, 15 SSOs discharged untreated wastewater to Boggs Creek, Gray's Creek, Wear's Creek, Missouri River and/or their tributaries ("receiving waters"). The receiving waters are "navigable waters" and "waters of the United States" as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and its implementing regulation, 40 C.F.R. § 122.2.

30. EPA alleges that each SSO identified in Paragraphs 28 and 29 above, is a violation of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, and as such is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

31. EPA alleges that each unauthorized discharge of pollutants identified in Paragraph 28 and 29 above, into the receiving waters described in Paragraph 29 is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

32. Respondent operates a stormwater drainage system consisting of, among other things, drain inlets, storm sewers, and outfalls, and as such is a "municipal separate storm sewer" as that term is defined in 40 C.F.R. § 122.26(b)(8).

33. At all times relevant to this Order, Respondent owned and/or operated an MS4, which does not meet the criteria to be a large or medium MS4, and thus is the owner and/or operator of a "small municipal separate storm sewer system," as defined by 40 C.F.R. § 122.26(b)(4)(i).

34. Respondent's small MS4 is located in the Jefferson City, Missouri "urbanized area" as defined by the 2000 Census, and therefore, at all times relevant to this Order, Respondent's small MS4 is subject to regulation.

35. Respondent's small MS4 is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

36. Respondent MS4 discharged pollutants into "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

37. Discharges from Respondent's small MS4 result in the addition of pollutants from a point source to navigable waters, and thus are the "discharges of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

38. Respondent's discharges from a small MS4 require a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. § 122.32.

39. MDNR issued a final MS4 Permit, Permit No. MO-R040049, for discharges from Respondent's small municipal MS4 under the NPDES, General Permit No. MO-R04000. This MS4 Permit was issued on June 13, 2008, and expired on June 12, 2013, and the permit has been administratively extended pursuant to 10 C.S.R. 20-6(10)(E).

40. On November 7-10, 2011, an EPA representative conducted an MS4 program Inspection (hereafter "the MS4 inspection") under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its MS4 permit and the CWA.

41. On February 13, 2013, EPA issued a Request for Information regarding the City's MS4 program, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to further evaluate the City's compliance with its MS4 permit and the CWA. The City submitted a response to the Request for Information on April 15, 2013.

42. As part of the MS4 Inspection and Request for Information described in Paragraphs 40 and 41 above, the City provided to EPA its Storm Water Management Programs Plan 2013-2018 ("SWMP") dated October 10, 2007, revised April 15, 2013.

#### Allegations of Violation Of Section 301 Of The CWA

43. The facts stated in Paragraphs 16 through 42, above, are herein incorporated.

Unpermitted Discharges

44. Upon information and review of the City's sanitary sewer overflow ("SSO") reports submitted to MDNR described in Paragraph 26, the City has discharged pollutants from the City's POTW at locations other than Outfall 001 on at least 15 occasions between October 2009 and June 2012, as described specifically in Appendix A. These SSOs are not permitted or otherwise authorized by the CWA.

45. 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).

#### Violations of Respondent's NPDES Permit

46. Pursuant to 40 C.F.R. § 122.41(e), Respondent's NPDES permit contains the following Standard Condition at Part I.B.3: "Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions... ." Part I.B.4 Respondent's NPDES permit requires that "[t]he permittee shall take all necessary steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit or set forth in the Missouri Clean Water Law and Regulation... ." (hereafter Part I.B.3 and 4 collectively referred to as the "Proper Operation and Maintenance Conditions").

47. Part A, Effluent Limitations and Monitoring Requirements, of Respondent's NPDES permit authorizes discharges *only* from Outfall 001 at the wastewater treatment facility.

48. Paragraph 5, Standard Conditions, of Respondent's NPDES permit prohibits any bypass or shut down of facilities or tributary sewer system that results in a violation of permit limits or conditions, except under circumstances not applicable here.

49. Many of the SSOs alleged in Paragraphs 28 and 29 above, resulted, in whole or in part, from Respondent's failure to comply with the Proper Operation and Maintenance Conditions in Respondent's NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Violations of Respondent's MS4 Permit

50. The facts stated in Paragraphs 16 through 42, above, are herein incorporated.

#### Storm Water Management Program and Plans Violations



51. Part 4.1.11 of the permit requires that the SWMP document shall include interim milestones, measurable goals, an implementation schedule and measures for success.

52. The City's SWMP referenced in Paragraph 42 does not include a description of processes and procedures for each minimum control measure in accordance with the City's MS4 permit, Part 4.1.11.

53. The City's failure to incorporate the required elements of a SWMP, as set forth in Paragraphs 51 and 52 above, are violations of its permit and, as such, are violations of Section 301 of the CWA, 33 U.S.C. § 1311(a).

#### Illicit Discharge Detection and Elimination Violations

54. Part 4.2.3.1.2 of the City's MS4 permit, which addresses the development, implementation and enforcement of a program to detect and eliminate illicit discharges, requires that the City effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the City's MS4. The ordinance should enable the City to inspect private property if an illicit discharge is suspected, as set forth in Part 4.2.3.1.6 of the City's MS4 permit.

55. Parts 4.2.3.1.3.1 through 4.2.3.1.3.3 of the City's MS4 permit, which addresses the necessary elements of the illicit discharge detection and elimination program, requires the City's SWMP referenced in Paragraph 43 to include procedures for locating priority areas, procedures for tracing the source, and for removing the source of an illicit discharge.

56. Part 4.2.3.1.3.5 of the City's MS4 permit requires the City to describe and implement a plan to inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

57. Part 4.2.3.1.6 of the City's MS4 permit, which addresses necessary elements of the illicit discharge detection and elimination program, requires the City to inventory, inspect, and have enforcement authority for industries and commercial enterprises within the City's boundary that may contribute pollutants via stormwater to the MS4.

58. The MS4 Inspection referenced in Paragraph 41 and the Request for Information referenced in Paragraph 42 above, reveal that the City ordinance or other regulatory method does not provide City personnel proper authority to adequately investigate and eliminate illicit discharges, nor does it include enforcement procedures, including fines.

59. The City's SWMP does not contain an adequate plan for training its employees, as required by Part 4.2.3.1.3.5 of the City's MS4 permit.

60. The City has not complied with Part 4.2.3.1.6 of its MS4 permit, specifically in that it has not adequately conducted industrial inspections.

61. The City's failure to incorporate and implement the required elements in its SWMP, as set forth in Paragraphs 54 through 60, are violations of its permit and, as such, are violations of Section 301 of the CWA, 33 U.S.C. § 1311(a).

#### Construction Site Stormwater Runoff Control Violations

62. Part 4.2.4.1.3 of the City's MS4 permit, which addresses elements of the Construction Site Stormwater Runoff program to reduce pollutants from construction activities, requires the City to develop and implement procedures to consider and review all pre-construction site plans.

63. Part 4.2.4.1.5 of the City's MS4 permit, which addresses elements of the Construction Site Stormwater Runoff program to reduce pollutants from construction activities, requires the City to develop and implement procedures to inspect sites and enforce control measures, including prioritization of site inspections.

64. Part 4.2.4.1.3 of the City's MS4 permit, which addresses the necessary elements of the Construction Site Stormwater Runoff program to reduce pollutants from construction activities, requires the City develop and implement procedures for consideration and review of all pre-construction site plans for potential water quality impacts.

65. Part 4.2.4.1.7 of the City's MS4 permit, which addresses the necessary elements of the Construction Site Stormwater Runoff program to reduce pollutants from construction activities, requires the City to develop procedures to evaluate the success of this minimum control measure.

66. The City's evaluation and review of pre-construction site plans do not include a standard operating procedure for consideration and review of all pre-construction site plans.

67. The City's procedures for review of pre-construction site plans do not include adequate review of construction activities and their potential impacts to water quality.

68. The City did not evaluate success of the construction site stormwater control minimum control measure.

69. The City's failure to incorporate and implement the required elements in its SMWP, as set forth in Paragraphs 62 through 68, are violations of its permit and, as such, are violations of Section 301 of the CWA, 33 U.S.C. § 1311(a).

Post-construction Stormwater Management Violations

70. Part 4.2.5.1 and 4.2.5.1.1 of the MS4 permit requires the City to develop, implement and enforce a program to address the quality of long-term stormwater runoff from new development and redevelopment projects, including a program to ensure that controls are in place to minimize water quality impacts, by reasonably mimicking pre-construction runoff conditions in affected new development and incorporating water quality protection in affected redevelopment projects to the maximum extent practicable, and include a combination of structural and/or non-structural Best Management Practices ("BMP") appropriate for the City's community.

71. Part 4.2.5.1.2 of the City's MS4 permit, which covers the development, implementation, and enforcement of a program to address post-construction stormwater runoff from new development and redevelopment projects, requires the City to develop an ordinance or other regulatory mechanism to address post-construction runoff to be included in the SWMP document. The permit further states that if the City's ordinance or regulatory mechanism is already developed, the City shall include a copy of the relevant sections with the SWMP document.

72. Part 4.2.5.1.3 of the City's MS4 permit, which covers the development, implementation, and enforcement of a program to address post-construction stormwater runoff from new development and redevelopment projects, requires the City to develop a plan to ensure adequate long-term operation and maintenance of selected BMPs, including types of agreements between the City and other parties.

73. Part 4.2.5.1.4 of the City's MS4 permit, which addresses the development, implementation, and enforcement of long-term stormwater runoff from new development and redevelopment projects to be included in the SWMP, requires the City to locate specific priority areas for this program.

74. Parts 4.2.5.1.5 through 4.2.5.1.5.4 of the City's MS4 permit, which addresses the development, implementation, and enforcement of long-term stormwater runoff from new development and redevelopment projects to be included in the SWMP, requires the City to describe and implement its post-construction program for non-structural BMPs including addressing standards to direct growth, encourage infill development in high density urban areas, education programs for developers and the public about project designs that minimize water

quality impact, and other measures to minimize the percentage of impervious area after development and incorporation of designs that provide for a variety of infiltration practices and source control measures.

75. Parts 4.2.5.1.6 through 4.2.5.1.6.2 of the City's MS4 permit, which addresses the development, implementation, and enforcement of long-term stormwater runoff from new development and redevelopment projects to be included in the SWMP, require the City to describe its post-construction program for structural BMPs including practices that provide infiltration, evapotranspiration or re-use such as grassed swales, bioretention cells, cisterns, green roofs, and redevelopment practices such as planter boxes, street retrofits, parking lot infiltration and green roofs.

76. Part 4.2.5.1.7 of the City's MS4 permit which addresses the development, implementation, and enforcement of a program to address long-term stormwater runoff from new development and redevelopment projects, requires the City to evaluate the success of this minimum control measure.

77. The City's SWMP does not adequately describe any appropriate non-structural and structural BMPs, as described in Parts 4.2.5.1.6 through 4.2.5.1.6.2 of the City's MS4 permit.

78. The City's SWMP does not provide adequate language regarding the City's effort to identify priority areas.

79. The City did not evaluate success of the post-construction stormwater management minimum measure.

80. The City's failure to incorporate and implement the required elements in its SWMP, as set forth in Paragraphs 70 through 79, are violations of its permit and, as such, are violations of Section 301 of the CWA, 33 U.S.C. § 1311(a).

#### Pollution Prevention/Good Housekeeping Violations

81. Part 4.2.6.1.2 of the City's MS4 permit, which addresses the development and implementation of a pollution prevention/good housekeeping program, requires the City to develop maintenance BMPs, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the regulated small MS4, to be included in the SWMP.

82. Part 4.2.6.1.3 of the City's MS4 permit, which addresses the development and implementation of a pollution prevention/good housekeeping program, requires the City to

describe and implement controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations and snow disposal areas the City operates.

83. Parts 4.2.5.1.4 and 4.2.5.1.5 of the City's MS4 permit, which addresses the development and implementation of a pollution prevention/good housekeeping program, require the City to describe and implement procedures for proper disposal of waste from the City's area of jurisdiction, including but not limited to dredged material, accumulated sediments, floatables and other debris.

84. Part 4.2.6.1.6 of the City's MS4 permit, which addresses the development and implementation of a pollution prevention/good housekeeping program, requires the City to develop and implement procedures to ensure that new flood management projects are assessed for impact on water quality.

85. Part 4.2.6.1.7 of the City's MS4 permit, which addresses the development and implementation of a pollution prevention/good housekeeping program, requires the City to develop and implement an employee training program to prevent and reduce storm water pollution from activities such as those related to park and open space maintenance and fleet building maintenance.

86. Part 4.2.6.1.8 of the City's MS4 permit, which addresses the development and implementation of a pollution prevention/good housekeeping program, requires the City to evaluate the success of the pollution prevention/good housekeeping minimum control measure.

87. The City's SWMP did not include adequate procedures for controls to reduce floatables and other pollutants to the regulated small MS4, as required by Part 4.2.6.1.2 of the City's MS4 permit.

88. The City's SWMP did not include adequate controls for reducing or eliminating the discharge of pollutants, as set forth in Part 4.2.6.1.3 of the City's MS4 permit.

89. The City's SWMP did not include adequate procedures for the proper disposal of waste removed from the City's MS4, as set forth in Parts 4.2.6.1.4 and 4.2.6.1.5 of the City's MS4 permit.

90. The City's SWMP did not include adequate procedures to ensure that new flood management projects are assessed for water quality, as set forth in Part 4.2.6.1.6 of the City's MS4 permit.

91. The City's SWMP did not include an adequate employee training program, as set forth by Part 4.2.6.1.7 of the City's MS4 permit.

92. The City did not evaluate success of the pollution prevention/good housekeeping for municipal operations minimum control measure.

93. The City's failure to incorporate and implement the required elements in its SMWP, as set forth in Paragraphs 81 through 92, are violations of its permit and, as such, are violations of Section 301 of the CWA, 33 U.S.C. § 1311(a).

### CONSENT AGREEMENT

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

95. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement and Final Order ("CA/FO").

96. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

97. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

98. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified in the paragraphs above, existing through the effective date of this CA/FO. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

99. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. §1251 *et seq.*, and all regulations promulgated there under.

100. The effect of settlement described in Paragraph 98, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 99, above, of this CA/FO.

101. The Final Order shall be entered and become effective only after the conclusion of the period of 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.

102. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

103. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

104. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), identified in Appendix B, which is enclosed to and incorporated into this CA/FO. The parties agree that performance of the SEP, set forth in Appendix B, is intended to secure significant environmental restoration and protection.

105. Respondent agrees that it will not deduct the cost of the SEP, as set forth in Appendix B, from its taxes.

106. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty in the amount of Twenty-five Thousand Dollars (\$25,000). Respondent agrees to pay Twelve Thousand Five Hundred Dollars (\$12,500) within thirty (30) days of the effective date of the Final Order and the remaining Twelve Thousand Five Hundred (\$12,500) to be paid within one hundred and twenty (120) days of the effective date of the Final Order.

107. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 106 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

108. The undersigned representative(s) of Respondent certifies that he is fully authorized to enter the terms and conditions of this Complaint and CA/FO and to execute and legally bind Respondent to it.

109. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This CA/FO may be executed by EPA upon receipt from Respondent of a signature page. Upon its execution, a copy of the executed agreement shall be sent by U.S. mail to Respondent.

Respondent agrees that the original CA/FO signed by Respondent shall be transmitted to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Upon the EPA's receipt of the signed original from Respondent and public notice in accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of 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 ("Consolidated Rules") by 40 C.F.R. Part 22, it shall be filed with the Regional Hearing Clerk.

### **FINAL ORDER**

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall submit a Work Plan to EPA that describes the implementation of the SEP identified in Appendix B. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the start and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA's comments within fifteen (15) days after receipt of EPA's written comments. The Work Plan shall become a Final Work Plan upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than twenty-four (24) months from the effective date of this Final Order.
2. Respondent shall notify EPA in writing within one week after the completion of the SEP. Within forty-five (45) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:
  - a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.
  - b. A signed and notarized certification that it has not deducted the SEP cost from its taxes.
  - c. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
  - d. An itemized accounting of the costs incurred per project in performance of the SEP. The itemization shall be submitted with the following statement, signed by



Respondent:

I certify that the information accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the United States, its agencies and departments, including the possibility of fine and imprisonment for knowing violations.

3. Respondent shall pay stipulated penalties in the following circumstances:
  - a. Except as provided in subparagraphs (b) and (c) below, for a SEP, which has not been completed satisfactorily as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount that equals the estimated cost of the SEP as set forth in Attachment 1, along with interest accrued at the statutory rate.
  - b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.
  - c. If the SEP is satisfactorily completed, but the Respondent spent less than 90% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Attachment 1 and the amount expended in implementing the SEP.
  - d. If no SEP is implemented and the penalty of Twenty-Five Thousand Dollars (\$25,000) is not made within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Five Thousand Dollars (\$5,000) in addition to that which is due, along with interest accrued at the statutory rate.

4. Payment of stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with the provisions of this Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region 7  
PO Box 371099M  
Pittsburgh, PA 15251.

The check shall note the case title and the docket number. A copy of the check shall be sent to Melissa A.C. Bagley, Assistant Regional Counsel, EPA-Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

5. Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other enforcement action or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

6. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to property not owned by Respondent that is the location of a SEP at all reasonable times to monitor Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

7. Respondent shall pay a civil penalty of Twenty-five Thousand Dollars (\$25,000). Respondent agrees to pay Twelve Thousand Five Hundred Dollars (\$12,500) within thirty (30) days of the effective date of the Final Order and the remaining Twelve Thousand Five Hundred (\$12,500) to be paid within one hundred and twenty (120) days of the effective date of the Final Order. Payments shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payments shall reference docket number CWA-07-2014-0068.

8. A copy of the check should be sent to:
- Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to:

Melissa A.C. Bagley  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 7

11201 Renner Boulevard  
Lenexa, Kansas 66219.

9. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Parties Bound

10. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

Reservation of Rights

11. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

12. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Effective Date

13. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from the effective date unless otherwise provided in this Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Melissa A.C. Bagley  
Assistant Regional Counsel

\_\_\_\_\_  
Date

FOR RESPONDENT:  
CITY OF JEFFERSON, MISSOURI:

  
Name \_\_\_\_\_

Date 7/11/14

Mayor  
Title \_\_\_\_\_

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

## Appendix A- Jefferson City Sanitary Sewer Overflows

Date	Address	Cause	Receiving Water
10/11/2009	Oscar Dr	Heavy Rain	Tributary to Ditch
10/30/2009	Grant St	Heavy Rain	Boggs Creek
10/30/2009	Jaycee Dr. @ Santa Cruse Restaurant	Heavy rain	Tributary to Wears Creek
10/30/2009	Monroe St	Heavy Rain	Tributary to Wears Creek
10/30/2009	Westly St. and Geneva St	Heavy Rain	Tributary to Gray Creek
11/15/2009	112 Elm St	Bypass	Tributary to Boggs Creek
11/16/2009	1520 Calvin Lane	heavy rain	Tributary to Boggs Creek
11/16/2009	Grant St	heavy rain	Tributary to Boggs Creek
5/8/2010	Rock Hill Rd	leaking valve	Tributary to Gray Creek
6/12/2010	2804 Sue	Force main break	Unnamed Tributary
3/13/2011	3228 Victoria	Force main break	Tributary to Gray Creek
3/30/2011	438 Valley View Ct.	grease	Tributary to Wears Creek
7/22/2011	1305 Moreau	broken pipe	Unnamed Tributary
6/5/2012	2108 Louis Circle	blockage	Tributary to Boggs Creek
6/26/2012	2634 Huntleigh Place MH 6034	blockage	Tributary to Wears Creek

## APPENDIX B

### SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

#### **Background**

The City of Jefferson City, Missouri, is responsible for providing street and parking lot lights throughout the downtown area. Currently, the City, like most other communities, employs outdated, relative high-energy demand sodium vapor lamps.

#### **Supplemental Environmental Project**

Jefferson City will spend \$30,000 to replace standard street/parking lot light fixtures with energy-efficient, light-emitting diodes (LED). The project is expected to reduce energy consumption by approximately 50 percent based upon studies by the Climate Group/USDOE. This sustainability initiative will help to reduce greenhouse gas emissions from City government operations. Compared to the current standard high-pressure sodium lights currently on streets, which last six years, LEDs can last up to 20 years before needing replacement. This will reduce maintenance costs, minimize solid waste, and better protect public safety through fewer outages.

In addition to the benefits of LED lights in general terms, LED technology is especially advantageous for street light systems due to safety and security issues. Due to the white light of LED light bulbs, these systems provide a more clear and illuminated vision than traditional streetlights, therefore improving visibility for drivers, cyclists and pedestrians.

#### **Supplemental Environmental Project Location**

The location of this project is the downtown area of Jefferson City, Missouri.

#### **Total Supplemental Environmental Project Cost**

The City will spend at least \$30,000.

#### **Schedule for Implementation of the Supplemental Environmental Project**

The City shall spend at least \$30,000 to implement this SEP within two years of the effective date of this Order.