

US EPA ARCHIVE DOCUMENT

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
RAYMORE, MISSOURI (THE CITY OF))	DOCKET NO. CWA-07-2014-0093
)	
Respondent)	
)	
Proceedings under)	COMPLAINT AND
Section 309(g) of the Clean Water Act,)	CONSENT AGREEMENT/
33 U.S.C. § 1319(g))	FINAL ORDER
)	
)	

COMPLAINT

Jurisdiction

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 United States Environmental Protection Agency's ("EPA's") 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 ("Consolidated Rules of Practice").

2. Complainant, the United States Environmental Protection Agency, Region 7 ("EPA") and Respondent, the city of Raymore, 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 Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

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 EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Wetlands and Pesticides Division of EPA Region 7 ("Complainant").

5. Respondent is the city of Raymore, Missouri (hereafter, "City" or "Respondent"), a municipality organized under the laws of the state of Missouri and authorized to conduct business in the state of Missouri.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, *inter alia*, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 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 all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

8. 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).

9. Pursuant to Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), EPA promulgated regulations ("Phase II stormwater regulations") in 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.

10. 40 C.F.R. § 122.26(a)(9)(i)(A) requires that on or after October 1, 1994, operators of small municipal separate storm sewer systems regulated pursuant to 40 C.F.R. § 122.32 are required to obtain a NPDES permit for discharges composed entirely of stormwater.

11. 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.

12. 40 C.F.R. § 122.26(b)(16) defines “small municipal separate storm sewer system,” in pertinent 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; and
- b. not defined as “large” (population of 250,000 or greater) or “medium” (population of greater than 100,000 or more but less than 250,000) MS4 pursuant to §§ 122.26(b)(4) and (b)(7), or designated as a MS4 under § 122.26(a)(1)(v).

13. 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).

14. The Missouri Department of Natural Resources (“MDNR”) is the agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

EPA’s General Allegations

15. Respondent is a municipality chartered under the laws of Missouri, and as such, is a “person,” as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

16. 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).

17. At all times relevant to this Order, Respondent owned and/or operated a “small municipal separate storm sewer system,” as defined by 40 C.F.R. § 122.26(b)(4)(i).

18. Respondent’s small MS4 is located in the Raymore, Missouri “urbanized area” as defined by both the 2000 and the 2010 Census, and therefore, at all times relevant to this Order, Respondent’s small MS4 is subject to regulation.

19. Respondent’s small MS4 is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. Respondent discharged pollutants from its small MS4 into “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

21. 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).

22. 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.

23. The MDNR issued NPDES General Permit No. MO-R040000 for discharges from Regulated Small MS4s on March 10, 2003, and reissued it on June 13, 2008. The permits expired on March 9, 2008 and June 12, 2013, respectively. The 2008 General Permit has been administratively continued by the MDNR pending issuance of a revised final permit. To continue coverage, a Regulated Small MS4 must timely submit a permit renewal application.

24. The Respondent submitted permit applications and Storm Water Management Program and Plans (“SWMPs”) to the MDNR in approximately February 2003 and November 2007, pursuant to section 4 of the NPDES General Permit. In response to Respondent’s applications and supporting information, the MDNR extended coverage under the Small MS4 Permit to Respondent, NPDES Permit No. MO-R040029, effective March 10, 2003, and June 13, 2008, respectively (hereafter referred to as “Permit” or “MS4 Permit”).

25. The Respondent submitted an application to extend coverage under the MS4 Permit to the MDNR by letter dated May 10, 2013, pursuant to section 4 of the Permit, and submitted an updated SWMP by letter dated June 28, 2013. The Respondent’s timely submission of the 2013 permit application and SWMP extends coverage under the MS4 Permit pending reissuance of the permit by the MDNR.

26. In response to comments from the MDNR regarding the updated 2013 SWMP, the Respondent revised and resubmitted the SWMP to MDNR by letter dated July 10, 2013 (hereafter, the “2013 SWMP”).

27. On September 14 and 15, 2009, EPA contracted Science Applications International Corporation (“SAIC”) to conduct an MS4 program inspection of Respondent’s MS4 (“MS4 Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

28. By letter dated December 8, 2010, the EPA issued a Request for Information to the Respondent pursuant to Section 308(a) of the CWA (hereafter “Information Request”). By letter dated February 7, 2011, the Respondent submitted a response to the Information Request to the EPA.

29. On June 6, 7 and 8, 2011 an EPA inspector performed an audit of the Respondent’s MS4 (“MS4 Audit”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

The purpose of the MS4 Audit was to evaluate the Respondent's compliance with its MS4 Permit, in accordance with the CWA.

30. Section 4.1.12 of the MS4 Permit requires that the permittee shall develop and fully implement each minimum control measure within five (5) years of receipt of the first MS4 permit. Additionally, Section 4.1.12 requires that the permittee shall comply with new or renewed standards as soon as practicable, but no later than 5 years from the date of reissuance.

31. Section 5.3 of the MS4 Permit requires all permittees submit to MDNR Annual Reports using forms provided by MDNR that include, among other things, the status of the permittee's compliance with permit conditions, an assessment of the appropriateness of the identified best management practices ("BMPs"), progress toward achieving the statutory goal of reducing the discharge of pollutants in stormwater to the maximum extent practicable, and the progress toward achieving measurable goals for each of the minimum control measures.

32. Pursuant to Section 5.3 of the MS4 Permit, the Respondent submitted annual reports to MDNR for reporting periods ending in 2009 through 2013.

33. Section 7 of the MS4 Permit states that all definitions in Missouri Code of State Regulation, at 10 CSR 20-6.200, apply to the permit. The Permit also includes several simplified explanations of terms for the convenience of the permittee, but cautions that in the event of any conflict, the definitions in the Missouri state regulations take precedence.

34. Missouri's regulations at 10 CSR 20-6.200(1)(C)1 define "Best Management Practices" or "BMPs" as, "[s]chedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage."

35. Section 7 of the MS4 Permit defines "control measure" as any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

EPA's Specific Allegations

Count 1

Failure to Develop a Comprehensive and Documented SWMP

36. The facts stated in Paragraphs 1 through 35, above, are restated and incorporated herein.

37. Section 1.4.1 of the City's MS4 Permit requires the permittee to submit with its application a written description of its SWMP. As defined in Part 7 of the permit, a SWMP is a "comprehensive documented program and plan to manage the quality of storm water discharges

from the municipal separate storm sewer system.” Requirements for the contents of the SWMP are set forth in Section 4 of the Permit.

38. Section 4.1 of the City’s MS4 Permit requires the permittee to develop, implement and enforce a SWMP that includes BMPs, control techniques and systems, design and engineering methods, and such other provisions as are appropriate for control of pollutants. The SWMP must address the six minimum control measures described in Section 4.2 of the permit, and must include the following information set forth in Section 4.1.1 through 4.1.3 of the permit:

- a. a description of the BMPs that the permittee will implement for each of the storm water minimum control measures;
- b. the measurable goals for each BMP including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the actions; and
- c. the person responsible for the SWMP, and the person(s) responsible for each minimum control measure if different from the primary responsible person.

39. Section 4.1.9 of the Permit requires that, in addition to other requirements listed in Part 4.1 of the Permit, the permittee shall document the decision process for each minimum control measure and include rationale statements for each BMP and measurable goal defined.

40. Section 4.1.11 of the Permit requires that the SWMP document include interim milestones, measurable goals, and implementation schedule and measures of success.

41. Respondent’s SWMP, including the SWMP as revised in July 2013, fails to include an adequate level of information necessary to demonstrate that the Respondent has an MS4 program that meets the criteria set forth in Section 4 of the MS4 Permit. Specific areas of deficiency include, but are not limited to:

- a. the SWMP includes minimal rather than comprehensive documentation of the City’s program and plan to manage the quality of storm water discharges from the MS4;
- b. the SWMP lacks a clear description of the BMPs that Respondent will use to implement each of the six minimum control measures, provides very limited information regarding the measurable goals for each BMP, lacks information regarding the months and years in which the required actions will be undertaken, lacks interim milestones and the frequency of the actions, and fails to clearly identify any person other than the Director of the Public Works Department as a person responsible for each minimum control measure;
- c. the SWMP lacks any documentation of the decision process for each minimum control measure or statement of the rationale for each BMP and measurable goal; and
- d. the SWMP lacks clearly identifiable measurable goals for each BMP, and the measurable goals that are identified do not indicate how the selected BMPs are expected to prevent or reduce the pollution of waters of the state or provide information on how the BMPs will achieve success in preventing pollution or how success will be measured.

42. The City's failure to prepare a comprehensive documented SWMP, as required by Section 4.1 of the MS4 Permit, to manage the quality of storm water discharges from the MS4 is a violation of its Permit and, as such, is a violation of Section 402 of the CWA.

43. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count 2

Failure to Evaluate Effectiveness of Public Education and Outreach Program

44. The facts stated in Paragraphs 1 through 43, above, are restated and incorporated herein.

45. Section 4.2.1.1 of the City's MS4 Permit requires the City to implement a public education and outreach program, described in the SWMP, to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps the public can take to reduce pollutants in storm water runoff.

46. Section 4.2.1.1.6 requires that the SWMP include a plan to evaluate the success of the public education and outreach program minimum control measure to be included in the SWMP document.

47. Neither the 2008 nor 2013 SWMP included a description of how the City plans to evaluate the success of the public education and outreach program minimum control measure.

48. In addition, the City's annual reports for reporting periods ending in 2009 through 2013 fail to provide information that demonstrates that the City has effectively assessed the success of its public education and outreach program on informing the community about the impacts of storm water discharges on water bodies and the steps the public can take to reduce pollutants in storm water runoff.

49. The City's failure to include in the SWMP a plan to evaluate the success of its public education and outreach program and/or to include in its annual reports an evaluation of the success of such program is a violation of its MS4 Permit and, as such, is a violation of Section 402 of the CWA.

50. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count 3
Failure to Address Illicit Discharge Detection and Elimination

51. The facts stated in Paragraphs 1 through 50, above, are restated and incorporated herein.

52. Section 4.2.3.1 of the City's MS4 Permit requires the City to develop, implement and enforce a program, described in the SWMP, to detect and eliminate illicit discharges into the City's MS4, commonly referred to as the Illicit Discharge Detection and Elimination ("IDDE") program.

53. Section 4.2.3.1.3 of the MS4 Permit, requires the City's SWMP to include a plan and implementation schedule to detect and address non-storm water discharges, including but not limited to dry weather field screening for non-storm water flows, procedures for locating priority areas, procedures and specific techniques for tracing the source of an illicit discharge, and procedures for removing the source of the illicit discharge.

54. Section 4.2.3.1.3.6 of the MS4 Permit requires the City's SWMP to include procedures for evaluation and assessment of the IDDE program.

55. The City's 2008 and 2012 SWMPs include a table listing categories of methods it plans to implement to detect and address non-stormwater discharges to the MS4, including visual inspection upon complaint, public complaint, and dry weather outlet inspection program. The table includes "X" marks in the column denoting the year of planned implementation. No additional information is included in either SWMP describing those activities.

56. The MS4 Inspection in 2009 and the MS4 Audit in 2011 revealed that, at the time of such Inspection and Audit, the City had not performed dry weather screening or sampling and analysis of the dry weather flows, had no written procedures for identifying priority areas, tracking sources of illicit discharges or removing illicit discharges.

57. None of the City's Annual Reports for reporting periods ending in 2009 through 2013 indicate that a dry weather screening program to detect illicit discharges had been implemented. Several of the reports mention that the City conducted investigations after receiving complaints of possible illicit discharges.

58. The MS4 Inspection, MS4 Audit and the City's Annual Reports reveal that the City does not have procedures for program evaluation and assessment of the effectiveness of the IDDE minimum control measures, and none of the City's Annual Reports for reporting years including in 2009 through 2013 provide any information describing the effectiveness of the IDDE program.

59. The City's failure to develop, implement and enforce its IDDE program, including failure to include in its SWMP a plan to detect and address non-storm water discharges, failure to conduct dry weather screenings, failure to have procedures for locating priority areas, tracing the

source of an illicit discharge, and removing the source of an illicit discharge, and failure to have procedures for, and failure to perform, program evaluation and assessment of this minimum control measure are violations of the MS4 Permit and, as such, are violations of Section 402 of the CWA.

60. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count 4

Failure to Address Post-Construction Stormwater Management

61. The facts stated in Paragraphs 1 through 60, above, are restated and incorporated herein.

62. Section 4.2.5.1 of the City's MS4 Permit requires the City to develop, implement and enforce a program to address long-term stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre that discharge into the City's MS4, often referred to as the Post-Construction program.

63. Section 4.2.5.1.1 of the MS4 Permit requires the City's SWMP to include a strategy to minimize water quality impacts to include a combination of structural and/or non-structural BMPs.

64. Section 4.2.5.1.2 of the City's MS4 Permit, requires the City's SWMP to include 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.

65. Section 4.2.5.1.3 of the City's MS4 Permit requires the City's SWMP to include a plan to ensure adequate long-term operation and maintenance of selected BMPs for the Post-Construction program, including types of agreements between the City and other parties.

66. Section 4.2.5.1.4 of the City's NDPEs permit requires the City's SWMP to include specific priority areas for implementation of the Post-Construction program.

67. Section 4.2.5.1.7 of the City's MS4 Permit requires the City's SWMP to include information regarding how it will evaluate the success of the Post-Construction program minimum control measure.

68. The 2008 SWMP states that the City, "uses an ordinance to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law."

69. The City's response to the Information Request in February 2011 states that the City will use a development agreement as provided in the Municipal Code section 455.020 to ensure long term operation and maintenance for the Post-Construction program. However, the MS4 Audit in June 2011 revealed that the City had no strategy or procedures to ensure proper long term operation and maintenance of controls discussed in the City's Municipal Code.

70. The 2013 SWMP, as revised, states that the City uses an ordinance to address post-construction matters and that operations and maintenance will be included as part of the Development Agreement between the City and a developer, but no further information or plan regarding the combination of structural and/or non-structural BMPs the City utilizes or has available to utilize to implement the Post-Construction program is included, nor does it reference, attach or describe such a plan.

71. The City's SWMP includes no priority areas for implementation of the Post-Construction program.

72. The MS4 Audit and review of the City's Annual Reports reveal that the SWMP does not describe how the City will evaluate the success of the Post-Construction program, nor had the City evaluated the success of the program. The City's Annual Reports for reporting years 2009 through 2013 indicated the City collected no information to determine the success of the program.

73. The City's failure to develop, implement and enforce a Post-Construction program that includes development and implementation of a strategy to minimize water quality impacts to include a combination of structural and/or non-structural BMPs, identification of priority areas, and a means to evaluate the success of the program, and failure to address the Post-Construction program requirements in its SWMP, are violations of the permit and, as such, are violations of Section 402 of the CWA.

74. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count 5

Failure to Address Pollution Prevention/Good Housekeeping

75. The facts stated in Paragraphs 1 through 74, above, are restated and incorporated herein.

76. Section 4.2.6.1 of the City's MS4 Permit requires the City to develop, implement and enforce a program, referred to as the Pollution Prevention/Good Housekeeping program, that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.

77. Section 4.2.6.1.1 of the City's MS4 Permit requires the City's SWMP to include, among other things, a list of all municipal operations that are impacted by the Pollution Prevention/Good Housekeeping program.

78. Section 4.2.6.1.4 of the City's MS4 Permit requires the City's SWMP to include controls identified in Sections 4.1.5 through 4.1.8 of the permit, including but not limited to: practices to keep solid waste from entering the waters of the state to the maximum extent possible; substances regulated under the Resource, Conservation and Recovery Act ("RCRA") or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") that are transported, stored, or used for maintenance, cleaning or repairs shall be managed according to the provisions of RCRA and CERCLA; and all paint, solvents, petroleum products and petroleum waste products (except fuels) under the control of the permittee shall be stored so that these materials are not exposed to stormwater.

79. Section 4.2.6.1.8 of the City's MS4 Permit requires the City to evaluate the success of the Pollution Prevention/Good Housekeeping program.

80. The MS4 Audit and review of the City's SWMP and Annual Reports reveal that the City has not developed a complete list of all municipal operations that are impacted by the Pollution Prevention/Good Housekeeping program. For example, none of the City's parks and related facilities are mentioned or listed in the SWMP or the Annual Reports.

81. The MS4 Audit and review of the City's SWMP and Annual Reports reveal that the City's SWMP does not include controls identified in Sections 4.1.5 through 4.1.8 of the permit. For example, the Annual Report for the reporting year ending in 2011 indicated that the City planned to develop storm water pollution prevention plans ("SWPPPs") for its municipal operations, however the 2013 SWMP includes a schedule for developing SWPPPs beginning in 2014 and concluding in 2017.

82. The 2008 SWMP stated that the City will "evaluate the success of the pollution prevention and good housekeeping program by tracking the progress of each measure against the implementation schedule." The City's Annual Reports for reporting years including in 2010 through 2013, however, indicated the City had no measurable goals for the program and collected no information to determine the success of the program. In addition, while the 2013 SWMP, as revised, indicates the City will adopt BMPs in the future, it does not describe what those BMPs will be nor does it indicate how their success will be evaluated; rather, the SWMP states only that "implementation of BMPs selected will determine the success of the measure on water quality."

83. The City's failure to develop, implement and enforce a Pollution Prevention/Good Housekeeping program that includes a list of all municipal facilities impacted by the program, controls identified in Sections 4.1.5 through 4.1.8 of the permit, and the means to evaluate the success of the program is a violation of the permit and, as such, is a violation of Section 402 of the CWA.

84. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

CONSENT AGREEMENT

85. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, the EPA has determined that an appropriate civil penalty to settle this action is **Twenty-Two Thousand Dollars (\$22,000)**.

86. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph and to the performance of the SEP described below, which the parties agree is intended to secure significant environmental and/or public health benefits.

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

88. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

89. 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 this Consent Agreement and the accompanying proposed Final Order.

90. Respondent and Complainant each agree to resolve 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.

91. Nothing contained in this Compliant and Consent Agreement/Final Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

92. In settlement of this matter, Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements.

- a. Project Description: Respondent shall construct and thereafter maintain for no less than two years, two Rain Gardens along the Eagle Glenn Trail in Raymore, Missouri, each with a bio retention mix that is 18 inches deep and 450 square feet of planting area. The Rain Gardens will be designed for the purpose of reducing erosion and

pollutants from pets, as well as to capture and filter first flush runoff from adjacent roadways prior to its discharge into a tributary of the South Grand River. The total retention capability of the Rain Gardens is expected to be approximately 7875 cubic feet of water in a 24-hour period. The project is further described in Appendix A of this Consent Agreement and Final Order;

- b. SEP Cost: the total expenditure for the SEP shall be not less than \$15,810;
- c. Completion Date: All work on the project except final plantings shall be completed by no later than December 1, 2014, unless Respondent submits a written request with substantiation to the EPA by no later than November 1, 2014, for an extension of time to complete the SEP until the next construction season. Such extension request shall specify a date for project completion by no later than two months into the estimated beginning date for the next construction season. All plantings will be installed and the Rain Gardens will be placed into active service by no later than May 31, 2015.

93. Within thirty (30) days of the SEP Completion Date, as identified in Paragraph 92.c. above, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below.

- a. The SEP Completion Report shall contain the following:
 - (i) A detailed description of the SEP as implemented;
 - (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks; and
 - (iii) The following certification signed by Respondent or its authorized representative:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:

Cynthia Sans, or her successor
WWPD/WENF
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

- c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 96 below.

94. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

95. Respondent shall continuously maintain, use and/or operate the systems installed as the SEP for not less than two (2) year following its installation.

96. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-on Amount:

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 92 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP Cost described in Paragraph 92.b., above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$12,650;
 - (ii) If the SEP is completed in accordance with Paragraph 92, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$2,000;
 - (iii) Respondent shall not be liable for stipulated penalties if:
 - (a) the SEP is not completed in accordance with Paragraph 92, but the Complainant determines that the Respondent: (1) made good faith and timely efforts to complete the project; and (2) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP; or
 - (b) the SEP is completed in accordance with Paragraph 92, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project.
 - (iv) Respondent shall pay a stipulated penalty in the amount of \$100 for each day:
 - (a) it fails to submit the SEP Completion Report after the due date specified in Paragraph 93 above, until the report is submitted; and
 - (b) it fails to submit any other report required by Paragraphs 92 or 93 above, after the report was originally due until the report is submitted.

- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated in Paragraph 100, below. Method of payment shall be in accordance with the provisions of Paragraphs 1 and 2 of the Final Order, below.

97. Respondent certifies that it 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 this or any other case or to comply 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.

98. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

99. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: *"This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."*

100. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 96 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 or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

101. Respondent consents that neither the civil penalty payment made nor any costs or expenditures incurred by Respondent in performing the SEP pursuant to this Complaint and Consent Agreement/Final Order will be deducted for purposes of federal taxes.

102. Respondent certifies by signing this Consent Agreement/Final Order that Respondent that is presently in compliance with Administrative Order for Compliance on Consent, EPA Docket No. CWA-07-2014-0094, to achieve compliance with all requirements of Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1342, including its MS4 program under its NPDES Permit.

103. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

104. The effect of settlement described in Paragraph 103 above is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in Paragraph 102.

105. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

106. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), the EPA is providing public notice and an opportunity to comment on this Consent Agreement/Final Order prior to issuance of the Final Order. In addition, pursuant to Section 309(g)(1)(a) of the CWA, 33 U.S.C. § 1319(g)(1)(A), the EPA has consulted with the MDNR regarding this action, and will mail a copy of this document, when executed, to the appropriate Missouri officials.

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-Two Thousand Dollars (\$22,000) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number "CWA-07-2014-0093" and shall be made by certified or cashier's check made payable to "Treasurer, United States of America," and remitted to:

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

Copies of the check shall be mailed to:

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

and

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

2. 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. 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 and interest thereon.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

5. 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.

6. 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.

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

8. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Patricia Gillispie Miller
Senior Counsel
Office of Regional Counsel

FOR RESPONDENT:
CITY OF RAYMORE, MISSOURI

9/23/14

Date



Signature

Name: Peter Kerckhoff

Title: Mayor

IT IS SO ORDERED.

Date

Karina Borromeo
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 Peter Kerckhoff, Mayor
City of Raymore
100 Municipal Circle
Raymore, Missouri 64083

and by first class mail to:

Mr. Paul Dickerson, Chief
Enforcement Section
Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Ms. Andrea Collier, Director
Kansas City Regional Office
Missouri Department of Natural Resources
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710

Date

Name

US EPA ARCHIVE DOCUMENT

*In the Matter of the City of Raymore, Missouri.
Complaint and Consent Agreement/Final Order
EPA Docket No. CWA-07-2014-0093*

Appendix A

Supplemental Environmental Project
Rain Gardens

Memo

To: Mike Krass, Public Works Director
From: Edward leans, Assistant Public Works Director
CC: File
Date: June 27, 2014
Re: Rain Garden design at Eagle Glenn

The Eagle Glenn Trail project will replace the existing asphalt trail with a new 8 foot wide concrete walking path adjacent to a riparian corridor (adjacent to an unnamed tributary of the South Grand River). This provides an opportunity for outreach and education by installing pet waste stations and "no mowing signs" adjacent to the riparian buffer which will reduce erosion and pollutants from pets. In addition there is an opportunity to install two rain gardens to further reduce potential storm water pollutants by capturing "first flush" runoff from the adjacent roadway that currently discharges directly into the riparian corridor at the proposed locations (see attached photo). Each rain garden will have plants and a bio mix that will capture nutrients such as nitrogen, metals, phosphorous and sediment.

Due to site constraints and limited accessibility, we would be able to place rain gardens in 2 locations on the east side of the trail. These rain gardens would be placed at the end of two existing storm lines to reduce runoff and erosion around the trail.

The design of the rain gardens are based on the MARC/APWA 2012 BMP manual. Each rain garden will have a bio retention mix that is 18 inches deep and 450 square feet of planting area. The bio mix will contain mulch and sand allows infiltration of runoff during rain events. The infiltration from the runoff is based on the permeability and absorption rate of the compost and sand. This combination will yield a permeability of 5 inches per hour. This will allow the rain gardens to retain approximately 7875 cubic feet of water each or a total of 15,750 cubic feet of runoff in a 24 hour period.

Design

The runoff that flows to each rain garden are as follows:

- a. LINE B: $(1.37(1.27)43560)/12$ equals 6316 cubic feet
- b. LINE E: $(1.37(1.94)43560)/12$ equals 9648 cubic feet

This brings the total required volume to 15964 cubic feet.

The amount storm water retained for each rain garden:

- a. $(450*24*5)/12 + 1.5(450)$ equals 7875 cubic feet
- b. $2*7875$ cubic feet equals 15750 cubic feet

In summary we are capturing 15750 cubic feet, or 99 percent of the required runoff.

The runoff that flows to each rain garden are as follows:

- a. LINE B: $(1.37(1.27)43560)/12$ equals 6316 cubic feet
- b. LINE E: $(1.37(1.94)43560)/12$ equals 9648 cubic feet
- c. Intensity for rain garden is 1.37 in/hour
- d. 1.27 acres for line B; 1.94 acres for line E
- e. Volume: $(\text{Acreage} \times 43560)/12$

This brings the total required volume to 15964 cubic feet.

The amount storm water retained for each rain garden:

- a. $(450 \times 24 \times 5)/12 + 1.5(450)$ equals 7875 cubic feet
- b. 2×7875 cubic feet equals 15750 cubic feet

Estimated Rain Garden Cost

Location 1	Line B		Quantity	Unit Price	Totals
Bioengineer Soil Mix	Cu Yds		30	\$42	\$1,260
Hardwood Mulch	Cu Yds		4	\$50	\$200
Native Plantings	Sq Foot		306	\$10	\$3,060
RipRap	Sq Foot		28	\$10	\$280
River Rock	Sq Foot		32	\$15	\$480
Underdrain	Lin Foot		75	\$35	\$2,625
Total					\$7,905

Location 2 Line E

Bioengineer Soil Mix	Cu Yds		30	\$42	\$1,260
Hardwood Mulch	Cu Yds		4	\$50	\$200
Native Plantings	Sq Foot		306	\$10	\$3,060
RipRap	Sq Foot		28	\$10	\$280
River Rock	Sq Foot		32	\$15	\$480
Underdrain	Lin Foot		75	\$35	\$2,625
Total					\$7,905



Google

38°48'00.39" N 94°28'50.82" W elev 1041 ft eye alt

1990