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

IN THE MATTER OF	)	Docket No. CWA 07-2013-0037
City of St. Joseph, 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)	)	

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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.

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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 St. Joseph, 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.

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8. 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

9. The Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. At all relevant times, Respondent has owned and operated a wastewater treatment facility ("WWTF") and its associated sewer and stormwater collection and transmission systems, which receive and treat wastewater and stormwater runoff from residential, commercial, and industrial connections within the City of St. Joseph, Missouri.

11. The WWTF described in Paragraph 10 is a "point source" that "discharges pollutants" to the Missouri River, which is a "navigable water," all as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 et seq.

12. On June 19, 2009, NPDES Permit No. MO-0023043 (hereafter "NPDES permit") was issued to Respondent by MDNR pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for discharges from its POTW to the Missouri River. The NPDES permit expires June 18, 2014.

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13. 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.

14. Respondent has discharged untreated wastewater on a minimum of 16 occasions, each of which constitutes a discharge of pollutants, to One Hundred and Two River, Candy Creek, Platte River, and their tributaries from May 2008 through the present.

15. One Hundred and Two River, Candy Creek, Platte River, and their tributaries are "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.

16. Respondent is without authorization to discharge pollutants from its POTW to the One Hundred and Two River, Candy Creek, Platte River and their tributaries without an NPDES permit.

Findings of Violation Of Section 301 Of The CWA

17. The facts stated in paragraphs 9 through 16 above are herein incorporated.

18. Between May 2008 through the present, Respondent discharged pollutants from a point source within its separate sanitary sewer system, which was not identified in its NPDES permits as an authorized outfall. This unauthorized discharge is not permitted or otherwise authorized by the CWA.

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19. The discharge referred to in Paragraph 18 constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

CONSENT AGREEMENT

20. 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.

21. Respondent neither admits nor denies the factual allegations contained in this Complaint and CA/FO.

22. 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 Consent Agreement and Final Order.

23. 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.

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

25. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent is on schedule to be in compliance with EPA's 2013 Administrative Order for Compliance on Consent, Docket No. CWA-07-2013-0039.

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26. The effect of settlement described in Paragraph 24, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 25, above, of this Consent Agreement and Final Order.

27. 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.

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

29. 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.

30. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty in the amount of Twenty-eight Thousand Dollars ($28,000) to be paid within thirty (30) days of the effective date of the Final Order.

31. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 30 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

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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.

32. The undersigned representative(s) of Respondent certifies that he is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement and Final Order and to execute and legally bind Respondent to it.

33. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This Consent Agreement and Final Order 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.

34. Respondent agrees that the original Consent Agreement and Final Order 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, KS 66219. Upon the EPA's receipt of the signed original from Respondent, 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. Respondent shall pay a civil penalty of Twenty-eight Thousand Dollars ($28,000), within thirty (30) days of entry of the Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket number CWA-07-2013-0037.

2. 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.

3. 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

4. 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.

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Reservation of Rights

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.

Effective Date

7. 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 — Date 9/9/13
Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Melissa A.C. Bagley — Date 9/9/13
Melissa A.C. Bagley
Assistant Regional Counsel

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FOR RESPONDENT:
CITY OF ST. JOSEPH, MISSOURI:

Name

Date 6-12-13

City Manager
Title

IT IS SO ORDERED.

9-10-13
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September 2013, I hand-delivered the original of the foregoing Complaint and Consent Agreement and Final Order with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; a true and correct copy of the same was sent by first class mail on the 10th day of September 2013, to the City of St. Joseph, Missouri, City Hall, 1100 Frederick Avenue, St. Joseph, Missouri 64504 and to Paul Dickerson, Water Pollution Compliance and Enforcement Section, PO Box 176, Jefferson City, Missouri 65101-0176

Kathy Robinson
Name