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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE the ADMINISTRATOR

IN the MATTER OF	)	
	)	
	)	Docket No. CWA-07-2012-0042
CITY OF COLUMBIA, MISSOURI	)	
	)	CONSENT AGREEMENT and
	)	FINAL ORDER
	)	
Respondent	)	
	)	
Proceedings under Section 309(a) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)	)	
_____	)	

The United States Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and the City of Columbia, Missouri (“Respondent”), 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) 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”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

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 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.

2. This Consent Agreement and Final Order (“CA/FO”) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

### Parties

3. 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 Water, Wetlands and Pesticides Division of EPA, Region 7.

4. Respondent is the city of Columbia, Missouri, and has a mailing address of 701 East Broadway, P.O. Box 6015, Columbia, Missouri 65205-6015.

### Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA,

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

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(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) requires that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

8. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26, which set forth the NPDES permit requirements for stormwater discharges.

9. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

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

### FINDINGS OF FACT

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

12. Respondent's Rolling Hills Road Construction project ("Rolling Hills Project") includes the construction of approximately 2,700 linear feet of street pavement and associated sidewalk; storm drain inlets and pipes; and other miscellaneous work. The Rolling Hills Project is located on Rolling Hills Road in Columbia, Missouri.

13. Respondent's Clark Lane Reconstruction project ("Clark Lane Project") includes the addition of sidewalks, bicycle lanes, and medians for a one-mile section of road located between Ballenger Place and St. Charles Road in Columbia, Missouri.

14. The Rolling Hills Project and Clark Lane Project (collectively, "Projects") are "point sources" that "discharge pollutants" into "navigable waters" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

15. Respondent's discharges of pollutants from the Projects require a permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. On June 15, 2007, MDNR issued NPDES permit No. MO-R100032, which covered, *inter alia*, Respondent's stormwater discharges from the Projects. The permit expired on May 31, 2012. A renewal permit was issued to the city with an expiration date of May 30, 2017.

17. MDNR inspected the Rolling Hills Project on December 21, 2011, and January 10, 2012. MDNR also conducted an inspection at the Clark Lane Project on January 25, 2012.

18. On February 6-7, 2012, EPA personnel inspected the Rolling Hills Project to determine Respondent's compliance with its NPDES permit and the CWA.

### **EPA'S ALLEGED VIOLATIONS**

EPA alleges the following:

#### **Inadequate Stormwater Pollution Prevention Plan**

19. Respondent's NPDES permit requires Respondent to mark outfalls on its site map, as part of its stormwater pollution prevention plan ("SWPPP").

20. EPA's inspection found that the facility site map for the Rolling Hills Project did not show the location of the site's stormwater outfalls.

21. Respondent's failure to properly label each outfall on the facility site map is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

Failure to Install Best Management Practices

22. Respondent's NPDES permit requires stormwater discharges from the Rolling Hills Project to pass through an appropriate sediment control before leaving the site.

23. EPA's inspection of the Rolling Hills Project found that the perimeter of the site lacked a sediment control best management practice ("BMP"). Sediment pollution from the disturbed area could flow unhindered into the neighboring tributary. The inspector observed sediment deposition along the drainage path and in the receiving tributary. The inspection also documents a similar failure to install sediment control BMPs along the perimeter of the disturbed areas surrounding the concrete box culvert installation.

24. Respondent's failure to install necessary sediment control BMPs is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

Failure to Install BMPs to Treat Water Pumped from Excavations at Site

25. Respondent's NPDES permit requires Respondent to install BMPs to treat water pumped from excavations at the site.

26. EPA's inspection of the Rolling Hills Project found that Respondent was dewatering the excavated pit for the concrete box culvert's foundation but had not installed any BMPs to treat or otherwise filter the pumped water before it left the site. The inspector observed turbid water in the tributary from the dewatering activities.

27. Respondent's failure to install any BMPs to treat the water pumped out of the dewatering operation is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

Failure to Fully Implement the SWPPP

28. Respondent's NPDES permit requires Respondent to fully implement the provisions of the SWPPP. The SWPPP requires Respondent to store hazardous materials at least 100 feet from any stream bank, wetland, water supply well, spring, or other body of water. The SWPPP also requires Respondent to store the materials, when possible, in a secondary containment and in a covered structure, such as a building or job trailer.

29. EPA's inspection of the Rolling Hills Project found that a drum of Strip-Eeze Form Release was located approximately 38 feet from the North Fork Grindstone Creek and did not have any secondary containment. In addition, the inspector observed some five-gallon cans of a material stored along a defined stormwater drainage course near the site's construction trailer.

30. Respondent's failure implement the provisions of its SWPPP by storing materials within 100 feet from any water body is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

Failure to Maintain Good Housekeeping Practices

31. Respondent's NPDES permit requires Respondent to maintain good housekeeping practices to keep solid waste from entering waters of the state.

32. EPA's inspection of the Rolling Hills Project found a heap of construction material that had been placed directly in an earthen channel used for draining stormwater from the rock construction road.

33. Respondent's failure to properly manage construction waste on the site is a violation of the good housekeeping requirement, and therefore is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

Failure to Properly Design, Implement, or Maintain Best Management Practices

34. Respondent's NPDES permit requires Respondent to select appropriate structural BMPs for use at the site.

35. EPA's inspection of the Rolling Hills Project found the presence of a single silt fence around the borrow area. The silt fence was an inappropriate sediment control because it was unable to prevent movement of sediment pollution from the borrow area to an unnamed neighboring tributary. Photographs from the inspection show a path of concentrated stormwater flowing down toward the tributary. The inspector also noted a large deposit of sediment in the tributary that was attributed to the absence of an appropriate BMP.

36. EPA's inspection also documented a second area where Respondent installed another silt fence, which was similarly inappropriate because it could not adequately prevent stormwater from flowing into the North Fork Grindstone Creek. The nature of terrain in the area warranted a more robust BMP.

37. Respondent's failure to select appropriate structural BMPs for these two foregoing areas in paragraphs 35 and 36 is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

Failure to Ensure that BMPs are Properly Installed

38. Respondent's NPDES permit requires Respondent to ensure that the BMPs are properly installed.

39. MDNR's inspection of the Clark Lane Project found that three BMPs were not properly installed. In each instance, sediment in a body of water was photographed immediately downstream of the improperly installed BMP.

40. Respondent's failure to properly install sediment control BMPs is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

#### Failure to Maintain Pollution Control Measures and Systems

41. Respondent's NPDES permit requires Respondent to maintain all pollution control measures and systems in good order to achieve compliance with the terms of the permit.

42. MDNR's inspection of the Clark Lane Project found that a silt fence on the west side of the site, south of the roadway, was overrun with sediment and needed to be cleaned out or replaced. This point was just upstream of sediment observed in an unnamed tributary of Hominy Branch.

43. Respondent's failure to maintain the silt fence on the west side of the Clark Lane Project is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

#### Missed Inspections and Reports

44. Respondent's NPDES permit states that if rainfall causes stormwater runoff to occur on a project site, Respondent must inspect the BMPs within 48 hours after the rainfall.

45. EPA's inspection of the Rolling Hills Project's records revealed that Respondent had not inspected the site's BMPs within 48 hours following rainfall events on December 6, 2011, and January 27, 2012.

46. Respondent's failure to timely inspect the BMPs within 48 hours after each abovementioned rainfall event is a violation of the NPDES permit and Section 402 of the CWA, 33 U.S.C. § 1342.

#### CONSENT AGREEMENT

47. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

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

49. Respondent neither admits nor denies the factual allegations set forth above.

50. 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.

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

52. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

53. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

54. This CA/FO addresses all civil and administrative claims for the alleged CWA violations identified above in paragraphs 19-46. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

55. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Rolling Hills Project and Clark Lane Project sites are in compliance with all requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and all regulations promulgated thereunder.

56. The effect of settlement described in paragraph 54 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 55 of this CA/FO.

57. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$25,000 as set forth in paragraph 1 of the Final Order.

58. Respondent understands that failure to pay any portion of the civil penalty on the proper due date may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

**FINAL ORDER**

**Payment Procedures**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of \$25,000 within 30 days of the effective date of this Final Order.
2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

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 the CWA-07-2012-0042.

Copies of the check shall be mailed to:

Chris Muehlberger  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101-2907

and to

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101-2907.

**Parties Bound**

3. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.



General Provisions

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


5. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

6. This 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

7. Respondent and Complainant shall bear their respective costs and attorney's fees.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

10-10-13  
Date

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

6.10.13  
Date

  
\_\_\_\_\_  
Chris Muehlberger  
Assistant Regional Counsel Office of  
Regional Counsel

RESPONDENT:  
CITY OF COLUMBIA, MISSOURI

5-17-13  
Date

Mike Matthes

Name (Print) Mike Matthes

Title City Manager

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

7-30-13  
Date

IN THE MATTER OF City of Columbia, Missouri, Respondent  
Docket No. CWA-07-2012-0042

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

muehlberger.christopher@epa.gov

Copy by First Class Mail to Respondent:

David A. Shorr  
Lathrop & Gage LLP  
314 E. High Street  
Jefferson City, Missouri 65101

Dated: 7/31/13



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7