



4. Respondent is Platte City, Missouri (hereafter “Respondent” or “the City”), a political subdivision of the State of Missouri and a “municipality” within the meaning of Section 502(4) of the CWA, 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

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. 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.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial and municipal waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States,” which are defined at 40 C.F.R. § 122.2 and which include tributaries to waters of the United States.

11. 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.

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

13. 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, implementing regulations, and a Memorandum of Understanding between EPA and MDNR. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

15. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. At all relevant times, Respondent has owned and operated the wastewater treatment facility and its associated sewer collection and transmission systems, which receive and treat wastewater from residential and commercial connections within Platte City, Missouri.

17. Respondent’s wastewater treatment facility described in Paragraph 16 is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

18. Respondent’s wastewater treatment facility causes the “discharge of pollutants” as defined by the CWA Section 502(12), 33 U.S.C. § 1362(12).

19. Respondent’s wastewater treatment facility discharges pollutants via an outfall into the Platte River, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

20. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, and as such Respondent’s discharge of pollutants requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. MDNR issued NPDES Permit No. MO-0026298 to Respondent for discharges from its wastewater outfall into the Platte River. The permit (hereafter “2008 NPDES permit”) became effective April 11, 2008, and expired April 10, 2013. The 2008 NPDES permit was administratively extended until MDNR reissued the permit on June 1, 2013; it will expire June 30, 2015 (hereafter “2013 NPDES permit”).

22. Section A, the Effluent Limitations and Monitoring Requirements section of Respondent’s 2008 NPDES permit, authorizes discharges from the specified outfalls as limited by the listed effluent limitations, including the following:

a. Fecal coliform

- i. effluent limitations for Outfall 001 – beginning four years and 364 days from the effective date of the permit, a monthly average of 400 colonies/100 milliliters (ml) and a daily maximum of 1,000 colonies/100 ml
- ii. monitoring frequency – once per month

b. Ammonia as Nitrogen

- i. effluent limitations for Outfall 001 – for the first three years after the effective date of the 2008 NPDES permit, an interim daily maximum concentration limitation of 3.0 milligrams per Liter (mg/L) during May 1 – October 31, and 4.5 mg/L from November 1 – April 30; and thereafter, a final monthly average concentration limitation of 1.4 mg/L during May 1- October 31 and 2.8 mg/L from November 1 – April 30, as well as a daily maximum concentration limitation of 4.9 mg/L during May 1- October 31 and 11.5 mg/l from November 1 – April 30
- ii. monitoring frequency – once per month

c. 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>)

- i. effluent limitations for Outfall 001 – a weekly average concentration limitation of 45 mg/L and a monthly average concentration limitation of 30 mg/L
- ii. monitoring frequency – once per month

d. Total Suspended Solids (TSS)

- i. effluent limitations for Outfall 001 – a weekly average concentration limitation of 45 mg/L and a monthly average concentration limitation of 30 mg/L
- ii. monitoring frequency – once per month.

23. The relevant permit requirements and limitations described in Paragraph 22 remained the same in the City's 2013 NPDES permit, with the exceptions of the limits for fecal coliform, which were replaced with limits for *Escherichia coli* (*E. coli*), with a weekly average limitation of 1,030 colonies/100 mL and a monthly average limitation of 206 colonies/100 mL measured once per week; and of the limits for ammonia, which were revised to a daily maximum concentration of 3.8 mg/L April 1 – Sept 30 and 12.1 mg/l October 1 – March 31, as well as a monthly average concentration of 1.5 mg/L April 1 – September 30 and 2.9 mg/L from October 1 – March 31.

24. On October 20-23, 2014, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of Respondent's facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its NPDES permit and the CWA. During the EPA inspection, the inspector collected wastewater samples of the treatment facility's influent and effluent, observed the wastewater treatment facility, and reviewed Respondent's self-monitoring records. The inspector issued a Notice of Potential NPDES Permit Violations at the end of the inspection, and

EPA sent the report documenting the findings of the inspection to Respondent on or about January 28, 2015.

### ALLEGATIONS

25. The facts stated in Paragraphs 15 through 24, above, are herein incorporated.

26. Based on observations documented during the EPA inspection and review of available information, EPA alleges that Respondent violated Section 301(a) of the act, 33 U.S.C. § 1311(a), by violating the terms and conditions of its NPDES permit, in at least the following ways:

#### Failure to Comply with Effluent Limitations

27. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its 2008 NPDES permit, by exceeding the fecal coliform monthly average limitation at least during the months of April and May 2013; and by exceeding the fecal coliform daily maximum limitation at least once each month during April and May 2013.

28. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its 2013 NPDES permit, by exceeding the *E. coli* weekly average limitation at least during the months of July, August, September and October 2013; and by exceeding the *E. coli* monthly average limitation at least during the months of June and September 2013.

29. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its 2008 and 2013 NPDES permits, by exceeding the ammonia monthly average concentration limitation at least during the months of October 2012 and September 2013; and by exceeding the ammonia daily maximum concentration limitation at least twice during October 2012, at least three times during September 2013, and at least once during April 2014.

30. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its 2008 NPDES permit, by exceeding the BOD<sub>5</sub> weekly average and monthly average concentration limitations at least during the month of October 2012.

31. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its 2008 and 2013 NPDES permits, by exceeding the TSS weekly and monthly average concentration limitations at least during the month of October 2012; and by exceeding the TSS weekly average concentration limitation at least during the month of September 2013.

32. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 42 below.

**CONSENT AGREEMENT**

33. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the Final Order.

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

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

36. Respondent waives any right to contest the allegations set forth in this Consent Agreement/Final Order and its right to appeal this Consent Agreement and the accompanying Final Order.

37. 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.

38. Nothing contained in this Consent Agreement/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, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

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

40. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent is in compliance with all requirements of the CWA and its NPDES permit.

41. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 40 of this Consent Agreement/Final Order.

42. Respondent consents to the issuance of the Final Order hereinafter recited and agrees to pay a mitigated civil penalty in the amount of \$15,200.

43. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Allegations.

Reservation of Rights

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

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

Penalty Payment

46. Respondent shall pay a civil penalty of Fifteen Thousand Two Hundred dollars (\$15,200) within thirty calendar days of the effective date of this Final Order. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2015-0046 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and to:

Erin Weekley  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

47. 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.

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

Parties Bound

49. This Consent Agreement/Final Order shall apply to and be binding upon Respondent, his agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein, comply with the terms of this Consent Agreement/Final Order.

General Provisions

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

51. This Consent Agreement/Final Order shall become 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.

52. 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.

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

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





RESPONDENT:  
PLATTE CITY, MISSOURI

29 APR 2015  
Date

Dennis J. Gehret  
Name  
[Signature]  
Signature  
City Administrator  
Title

**FINAL ORDER**

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

6-25-15  
Date

**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 by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

The Honorable Frank Offutt  
Mayor of Platte City  
400 Main Street  
Platte City, Missouri 64079.

In addition, I certify that I sent by first class mail a true and correct copy of the original Complaint and Consent Agreement/Final Order to:

Paul Dickerson, Environmental Manager  
Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, Missouri 65102

and to

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

Dated this 25<sup>th</sup> day of June, 2015.

Kathy Robinson  
Name