

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

IN THE MATTER OF: )  
 )  
RAYMORE, MISSOURI (THE CITY OF) )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. CWA-07-2014-0093

JOINT MEMORANDUM AND STIPULATION IN RESPONSE TO  
ORDER TO SUPPLEMENT THE RECORD

Complainant, Director of the Water, Wetlands and Pesticides Division of the United States Environmental Protection Agency, Region 7, and Respondent, the city of Raymore, Missouri, (hereafter referred to as the "Parties"), by and through their respective attorneys, submit this Joint Memorandum and Stipulation in Response to the Order to Supplement the Record, issued by the Presiding Officer on January 26, 2015. The Order requires the Parties to address three questions regarding how the Supplemental Environmental Project ("SEP") in the Consent Agreement and Final Order ("CAFO") for the above titled case conforms to the Agency's 1998 SEP Policy. The three questions to be answered are: 1) when the Agency identified the violation(s); 2) when Respondent committed to perform or started the SEP; and 3) whether the SEP has been completed or an extension of time was requested and approved.

In responding to these questions, the Parties begin by offering the following publicly available information regarding the time line of events in negotiating a settlement in this matter:

December 20, 2013 Complainant sends a letter inviting Respondent to participate in negotiations regarding Respondent's alleged violations related to its Municipal Separate Storm Sewer System ("MS4") program. The letter refers to the Agency's previous investigations related to Respondent's MS4 program, including a request for information in 2010, an audit in 2011, and review of the Respondent's MS4 2013 Storm Water Management Plan and MS4 annual reports.

- June 27, 2014 Respondent submits to Complainant for the purpose of settlement in this matter, a memo describing a proposed design for a Rain Garden SEP along the Eagle Glen Trail, to be undertaken in conjunction with other future modifications and upgrades to the City's Eagle Glen Trail. (See, CAFO, Appendix A.)
- August 11, 2014 Respondent's City Council considers and approves an ordinance for completion of modifications and upgrades to the Eagle Glen Trail, including the rain gardens SEP.
- August 25, 2014 First reading of bills before Respondent's City Council requesting approval of a settlement with the Agency regarding alleged MS4 violations as set forth in the proposed CAFO in this matter and an Order for Compliance on Consent, EPA Docket. No. CWA-07-2014-0094.
- August 26, 2014 Respondent signs a contract for construction in accordance with the August 11<sup>th</sup> ordinance.
- September 8, 2014 Second reading before Respondent's City Council, and approval of a settlement with the Agency as set forth in the proposed CAFO in this matter and the aforementioned Order for Compliance on Consent.
- September 23, 2014 Signature by Respondent on the proposed CAFO in this matter and the Order for Compliance on Consent.
- October 1, 2014 Complainant issues Order for Compliance on Consent, in the matter of the City of Raymore, Missouri, EPA Docket No. CWA-07-2014-0094.
- October 2, 2014 Complainant issues Public Notice regarding the CAFO in this matter pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.45.
- October 9, 2014 Approximate start date for work by Respondent on the Eagle Glen Trail rain gardens SEP.
- December 1, 2014 Respondent substantially completes all work on the SEP except final plantings, as required by Paragraph 92.c. of the CAFO. Pursuant to Paragraph 92, the Respondent is prepared to complete all final plantings and place the project into service on or before May 31, 2015, and to maintain the project for no less than two years.
- January 12, 2015 Following completion of all requirements of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.45, related to providing an opportunity for public notice and comment on said settlement, including mandatory period to allow for petitions for review following public comments received, Complainant signs CAFO and forwards it to the attention of the Presiding Officer.

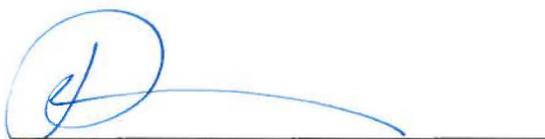
In response to the Presiding Officer's three questions regarding the settlement, the Parties further answer and stipulate: 1) that the Agency identified the Respondent's alleged violations, as set forth in the CAFO, during an inspection in September 2009, through an information request in December 2010, during an audit in 2011 (*Id.*, para. 27, 28 and 29, respectively), and based upon review of Respondent's 2013 MS4 Storm Water Management Program Plan and MS4 annual reports for reporting periods ending in 2009 through 2013 (*Id.*, Counts 1 through 5); 2) that Respondent proposed performing the Eagle Glen Trail rain gardens SEP in approximately June 2014, signed a contract for the work in August 2014, and began work on the SEP in October 2014; and 3) that Respondent did not request an extension of time to complete the SEP, that Respondent substantially completed construction work on the SEP by December 1, 2014, except for final planting, and that Respondent is prepared to complete final planting and place the rain gardens in service before May 31, 2015, and to maintain and operate the rain garden for at least two years, all as required by Paragraph 92 of the CAFO.

The Parties additionally submit that the SEP included in the subject CAFO meets the requirements of the Agency's 1998 SEP policy, including the requirements of Section B of the SEP policy that the project be undertaken "in settlement of an enforcement action" and "is not commenced until after the Agency has identified a violation (e.g., issued a notice of violation, administrative order, or compliant)." In the instant matter, as described in the CAFO, the Agency had performed a series of investigations to determine the Respondent's compliance with its MS4 program. The Respondent was formally made aware of the Agency's intent to issue an administrative action for compliance and possibly penalties by Complainant's letter of December 20, 2013. The Respondent's proposal to perform a SEP was offered in June 2014, and work on the project did not commence until October 2014, which in fact was also after Respondent had signed the CAFO and it had been placed on public notice. Respondent commenced work on the

SEP in advance of completion of the public notice period in order to utilize the remaining construction season, to ensure meeting the CAFO's deadlines for compliance and completing the project within budget.

Therefore, the Parties, having provided information in response to the questions raised by the Presiding Officer and having stipulated facts demonstrating that the requirements of the Agency's 1998 SEP Policy have been met, respectfully request entry of the Consent Agreement and Final Order.

Respectfully submitted,



Patricia Gillispie Miller  
Senior Counsel  
U.S. Environmental Protection Agency, Region 7



Thomas J. Grever  
Partner  
Shook Hardy & Bacon LLP

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Memorandum and Stipulation in Response to the Order to Supplement the Record 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 Memorandum and Stipulation in Response to the Order to Supplement the Record in the following manner:

By email to Attorney for Respondent:

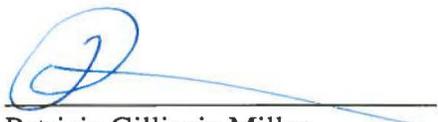
TGREVER@shb.com

By First Class Mail to:

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Water Pollution Control Program  
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Andrea Collier, Director  
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Date 2/3/2015  
PCW

  
Patricia Gillispie Miller  
Senior Counsel, Region 7

