

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

IN THE MATTER OF)	Docket No. CWA 07-2016-0002
)	
THE CITY OF LEAVENWORTH, KANSAS)	
)	
A Municipality)	
)	COMPLAINT AND CONSENT AGREEMENT / FINAL ORDER
)	
Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g))	
)	

COMPLAINT

Jurisdiction

1. This Administrative Complaint ("Complaint") has been filed under the authority vested in the Administrator of the U.S. 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.

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 Leavenworth, Kansas (hereafter "Respondent" or "City"), is a political subdivision of the state of Kansas 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.

8. As defined by 40 C.F.R. § 403.3(q), a POTW includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

9. 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 (5) 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).

10. Pursuant to Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), EPA promulgated regulations (“Phase II stormwater regulations”) at 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.

11. 40 C.F.R. § 122.26(a)(9)(i)(A) states that on or after October 1, 1994, for discharges composed entirely of stormwater . . . operators shall be required to obtain a NPDES permit . . . if the discharge is from a small municipal separate storm sewer system (“MS4”) required to be regulated pursuant to 40 C.F.R. § 122.32.

12. 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.

13. 40 C.F.R. § 122.26(b)(16) defines "small municipal separate storm sewer system," in 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 [. . .];
- b. not defined as "large" or "medium" municipal separate storm sewer systems pursuant to Paragraphs (b)(4) and (b)(7), or designated under Paragraph (a)(1)(v) of this section.

14. 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 (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); 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).

15. The Kansas Department of Health and Environment ("KDHE") 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, the implementing regulations, and a Memorandum of Understanding between EPA and KDHE dated May 23, 1973, as amended. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

Factual Background

16. The City of Leavenworth is a political subdivision of the state organized under the laws of Kansas, and as such is a “person” for purposes of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

17. The City owns and operates a POTW that receives and treats wastewater from various domestic, commercial and industrial sources.

18. The City’s POTW discharges to the Missouri River, which is a “navigable water” and “water of the United States” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.

19. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

20. The City’s POTW is a “point source” that “discharges pollutants” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

21. The City’s discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

22. On July 1, 2008, KDHE granted NPDES Permit No. KS0036366 (hereafter “2008 NPDES Permit”), to the Respondent for discharges from the POTW to the Missouri River, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The 2008 NPDES Permit had an expiration date of December 31, 2012. On January 1, 2013, KDHE reissued the Respondent a NPDES Permit, which has an expiration date of December 31, 2017 (hereafter “Current NPDES Permit”).

23. On November 20 and 25, 2013, an EPA representative performed a Sanitary Sewer Overflow (“SSO”) Inspection (hereafter “the EPA inspection”) of the City’s wastewater collection system under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City’s compliance with its NPDES permit and the CWA.

24. During the EPA inspection described in Paragraph 23 above, the inspector reviewed the City’s records related to the wastewater collection system, conducted a visual inspection of the City’s four (4) lift stations, and completed a SSO inspection checklist.

25. On or about April 4, 2014, EPA sent the City a Request for Information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, which the City received on or about April 7,

2014. On or about April 17, 2014, and April 29, 2014, the City submitted responses to the Request for Information which were received by the EPA on or about April 22, 2014, and April 29, 2014.

26. The City submitted to EPA SSO reports for March 2010 through November 2013, as part of the Inspection described in Paragraph 23 and the City's responses to the Request for Information described in Paragraph 25.

27. Respondent's 2008 NPDES Permit and Current NPDES Permit (collectively "NPDES Permits") authorize Respondent to discharge pollutants only from a specified point source, identified in the NPDES Permits as "Outfall 001A1," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permits.

28. Within the past five (5) years, Respondent has discharged untreated wastewater from locations within the Respondent's POTW, also known as sanitary sewer overflows ("SSOs"), including those described specifically in the table in Appendix A, attached hereto. None of the locations of these discharges are the Outfall 001A1 identified in Respondent's NPDES Permits.

29. Of the SSOs described in Paragraph 28, 19 SSOs discharged untreated wastewater to tributaries of the Missouri River ("receiving waters"). The receiving waters are "navigable waters" and "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.

30. EPA alleges that each SSO identified in Paragraphs 28 and 29 above, is a violation of the terms and conditions of the NPDES Permits issued pursuant to Section 402 of the CWA, and as such is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

31. EPA alleges that each unauthorized discharge of pollutants identified in Paragraph 28 and 29 above, into the receiving waters described in Paragraph 29 is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

32. 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" ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).

33. At all times relevant to this Order, Respondent owned and/or operated an MS4, which does not meet the criteria to be a large or medium MS4, and thus is the owner and/or operator of a "small municipal separate storm sewer system," as defined by 40 C.F.R. § 122.26(b)(4)(i).

34. Respondent's small MS4 is located in the Leavenworth, Kansas "urbanized area" as defined by the 2000 Census, and therefore, at all times relevant to this Order, Respondent's small MS4 is subject to regulation.

35. Respondent's small MS4 is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

36. Respondent's MS4 discharged pollutants into "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

37. 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).

38. 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.

39. KDHE issued a Final Permit on October 1, 2004, for discharges from Leavenworth's small MS4 under the NPDES, Permit No. KSR044011 (hereinafter "2004 Permit"). This 2004 Permit expired on September 30, 2009. KDHE administratively extended the permit until a new permit was reissued on February 1, 2014, which will expire January 31, 2019 ("Current Permit").

40. On March 6, 2003, the City developed a Stormwater Management Plan which they submitted to KDHE.

41. On or about December 10-13, 2013, EPA performed an inspection of the City's MS4 under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the adequacy of the City's MS4 in accordance with the CWA.

Allegations of Violation of Section 301 Of The CWA

42. The facts stated in Paragraphs 16 through 41, above, are herein incorporated.

Unpermitted Discharges

43. Respondent's 2008 NPDES Permit and Current NPDES Permit (collectively "NPDES Permits") authorize Respondent to discharge pollutants only from a specified point source, identified in the NPDES Permits as "Outfall 001A1," to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permits.

44. Within the past five (5) years, Respondent has discharged untreated wastewater from locations within the Respondent's POTW, also known as SSOs. None of the locations of these discharges are the Outfall 001A1 identified in Respondent's NPDES Permits.

45. Of the SSOs described in Paragraphs 44, 19 SSOs discharged untreated wastewater to tributaries of the Missouri River ("receiving waters"). The receiving waters are "navigable waters" and "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.

46. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Upon information and review of the City's SSO reports submitted to KDHE described in Paragraph 26, the City has discharged pollutants from the City's POTW at locations other than Outfall 001A1 on at least 19 occasions within the past five (5) years, including those described specifically in Appendix A. These SSOs are not permitted or otherwise authorized by the CWA.

47. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violations of Respondent's NPDES Permits

48. Standard Condition No. 8 of the City's 2008 NPDES permit, titled "Facilities Operation," requires:

The permittee shall at all times maintain in good working order and efficiently and effectively operate all treatment, collection, control systems or facilities, to achieve compliance with the terms of this permit. Such proper operation and maintenance procedures shall also include adequate laboratory controls and appropriate quality assurance procedures....The permittee shall take all necessary steps to minimize or prevent any adverse impact to waters of the State resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. When necessary to maintain compliance with the permit conditions, the permittee shall halt or reduce those activities under its control which generate wastewater routed to this facility.

49. Standard Condition No. 6 of the City's Current NPDES permit, titled "Facilities Operation," requires:

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this permit and Kansas and Federal law.... The

permittee shall take all necessary steps to minimize or prevent any adverse impact to human health or the environment resulting from noncompliance with any effluent limits specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. When necessary to maintain compliance with the permit requirement, the permittee shall halt or reduce those activities under its control which generate wastewater routed to this facility.

50. Within the past five (5) years, Respondent has discharged untreated wastewater from locations within the Respondent's POTW, also known as SSOs. Many of the SSOs were, in whole or in part, the result of the City's failure to at all times properly operate and maintain its POTW consistent with its standard conditions outlined in Paragraphs 48 and 49, above.

51. The City's failure to comply with the operations and maintenance provision of the Standard Conditions in Paragraphs 48 and 49, is a violation of the terms and conditions of its NPDES Permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violations of Respondent's MS4 Permit

52. The facts stated in Paragraphs 16 through 41, above, are herein incorporated.

Failure to Implement an Adequate Stormwater Management Program (SWMP)

53. Part II of the City's 2004 Permit requires the City to develop a Stormwater Management Program document. The SWMP document shall address each of the program areas control measures and any Best Management Practices ("BMPs") which shall be implemented to ameliorate the discharge of Total Maximum Daily Load ("TMDL") regulated parameters. The SWMP document will be modified if the permittee and/or KDHE determines such modifications are needed to achieve the goals of the program. The SWMP shall be evaluated annually and modifications, if necessary submitted with the annual report required in Part V.B. of the 2004 Permit. The SWMP shall include BMPs for the six (6) minimum controls. The six (6) minimum control measures and the requirements imposed by the 2004 Permit include Public Education and Outreach, Public Involvement and Participation, Illicit Discharge Detection and Elimination, Construction Site Stormwater Runoff Control, Post-Construction Stormwater Management in the New Development and Redevelopment Projects, and Pollution Prevention/Good Housekeeping for Municipal Operations.

54. Part 1.A. of the City's Current Permit requires the City to continue to implement, and enforce the current SWMP until an updated SWMP is implemented. Part 1.B. requires the City to update its current SWMP document to include any additional requirements of the Current Permit. The updated SWMP is to be designed to:

- a. reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable;
- b. continue to implement the six (6) minimum controls as outlined in Paragraph 53 above;
- c. satisfy the requirements of the Current Permit, the CWA, and Kansas surface water quality statutes and regulations.

55. Part IV.A.4.d of the City's 2004 Permit requires the City, in its Construction Site Stormwater Runoff Control program, to develop and implement "procedures for site plan review which incorporate consideration of potential water quality impacts." The City's 2003 SWMP, as described in Paragraph 40, also requires pre-construction site plan review.

56. The EPA inspection referenced in Paragraph 41 above found that the City does not conduct adequate site plan reviews including how water quality is being impacted by construction activities.

57. Part IV.A.4.f of the City's 2004 Permit requires the City to develop and implement procedures for site inspection and enforcement of control measures at construction sites within the City. The City's 2003 SWMP also requires site-inspection and enforcement of control measures.

58. The EPA inspection referenced in Paragraph 41 above found that the City does not conduct inspection activity that would adequately inspect sites to ensure BMPs are being implemented to prevent offsite migration of sediment.

59. Part IV.A.5.b of the City's 2004 Permit requires the City, as part of its post-construction program, to develop and implement "strategies which include a combination of structural and/or non-structural BMPs appropriate for the municipality." The City's 2003 SWMP also requires BMPs as appropriate.

60. The EPA inspection referenced in Paragraph 41 above documented that the City failed to have uniform procedures to evaluate/recommend post-construction management procedures for public and private projects in the City.

61. Part IV.A.5.d of the City's 2004 Permit requires the City, as part of its post-construction program, to "ensure adequate long-term operation and maintenance of BMPs." The City's 2003 SWMP also requires adequate long-term operation and maintenance of BMPs.

62. The EPA inspection referenced in Paragraph 41 above documented that the City had not yet fully developed and implemented a plan for long-term operation and maintenance of post-construction stormwater BMPs.

63. The City's failure to implement an adequate SWMP, specifically implement an adequate construction site management program and post-construction stormwater management program is a violation of the City's Permit, issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

CONSENT AGREEMENT

64. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

65. Respondent admits the jurisdictional allegations of this Consent Agreement and 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 set forth below.

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

67. 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 accompanying this Consent Agreement.

68. 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 the Administrative Orders for Compliance on Consent, Docket Nos. CWA-07-2015-0022 and CWA-07-2015-0023.

69. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

70. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), identified in Appendix B, which is enclosed to and incorporated into this Consent Agreement and Final Order. The parties agree that performance of the SEP, set forth in Appendix B, is intended to secure significant environmental restoration and protection.

71. Respondent agrees that within ninety (90) days of the effective date of this Final Order, Respondent shall submit a Work Plan to EPA that describes the details and implementation of the SEP identified in Appendix B. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the estimated start date and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments within thirty (30) days of receipt. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA's comments within thirty (30) days after receipt of EPA's written comments. The Work Plan shall become a Final Work Plan upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than twenty-four (24) months from the effective date of this Final Order.

72. Respondent shall notify EPA in writing within two weeks after the completion of the SEP. Within sixty (60) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

- a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.
- b. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
- c. An itemized accounting of the costs incurred per project in performance of the SEP.

73. Respondent shall pay stipulated penalties in the following circumstances:

- a. Except as provided in subparagraphs (b) and (c) below, for a SEP, which has not been completed satisfactorily pursuant to the approved SEP Work Plan as described above and as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount of Thirty-eight Thousand Eight Hundred Dollars (\$38,800), along with interest accrued at the statutory rate.
- b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 80% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.

- c. If the SEP is satisfactorily completed, but the Respondent spent less than 80% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Appendix B and the amount expended in implementing the SEP.
- d. If no SEP is implemented and the penalty of Forty-six Thousand Two Hundred Dollars (\$46,200) is not paid within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Five Thousand Dollars (\$5,000) in addition to that which is due, along with interest accrued at the statutory rate.

74. Payment of the stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with the provisions of this Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by check, cashier's, or certified check made payable to the "United States Treasury" and shall be remitted to:

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

The check shall note the case title and the docket number. A copy of the check shall be sent to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

75. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent 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 any other enforcement action or in compliance 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.

76. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to

property not owned by Respondent that is the location of a SEP at all reasonable times to monitor Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

77. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty of Forty-six Thousand and Two Hundred Dollars (\$46,200). Payment of this civil penalty shall resolve all civil and administrative claims for all violations of CWA alleged in this document.

78. 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.

79. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payment shall be by check, cashier's, or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

80. The Respondent shall reference the Docket Number CWA-07-2016-0002 and In the Matter of the City of Leavenworth, Kansas on the check. A copy of each check shall also be mailed to:

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

and

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

81. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

82. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

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

84. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This CA/FO 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.

85. The effect of the settlement described above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 68 above.

86. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under 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.

87. 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 Consent Agreement and Final Order.

88. This Consent Agreement and Final Order shall be effective upon filing of the Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

89. Respondent agrees that the original CA/FO 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, Kansas 66219. Upon the EPA's receipt of the signed original from Respondent and public notice in accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 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") by 40 C.F.R. Part 22, it shall be filed with the Regional Hearing Clerk.

90. This Final Order portion of this Consent Agreement and Final Order 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 the Consent Agreement and Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Melissa A.C. Bagley
Assistant Regional Counsel

Date

FOR RESPONDENT:
CITY OF LEAVENWORTH, KANSAS:

L. Weakley
Name

12-10-2015
Date

Lisa Weakley, Mayor
Title



FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective upon filing, pursuant to 40 C.F.R. § 22.31(b).

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of _____ 2015, 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 ___ day of _____ 2015, to the City of Leavenworth, Kansas, 100 N. 5th Street, Leavenworth, Kansas, 66048.

Name

APPENDIX A

Start Date	End Date	Location	Cause	Receiving Water
3/5/2010	3/5/2010	314 Spruce, MH 0350 to MH 0349	City Line Break (Not Construction Related)	Missouri River
6/11/2010	8/20/2010	sewer line between MH 1449 and 1450	Leak in main at creek crossing	Five Mile Creek
8/25/2010	11/17/2011	MH AAB-ABA	City Line Break (Not Construction Related)	Five Mile Creek
3/4/2011	3/4/2011	HALLMARK LIFT STATION	Operator error	Tributary to Seven Mile Creek
4/22/2011	4/22/2011	1122 Ironmoulders	Mainline blockage	Tributary to Three Mile Creek
9/30/2011	9/30/2011	1800 S. 2nd St, MH AAAB	Flood washed out sandbags blocking MH invert	Five Mile Creek
10/22/2011	10/22/2011	1800 S. 2nd St, MH AAAB	Power Related Failure	Five Mile Creek
5/20/2012	5/22/2013	The creek crossing between MH #'s 1407 and 1428	The creek crossing and part of the manhole failed	Five Mile Creek
7/3/2012	8/22/2012	area of 1203 Cherokee Street	sanitary sewer appears to be leaking into storm sewer	Tributary to Three Mile Creek
8/17/2012	8/27/2012	alley between Kickapoo, Kiowa, Broadway and Seventh	sanitary sewer leaking into the storm sewer	Three Mile Creek
10/3/2012		area of 5th Avenue & Prospect.	sewer leaking into the Creek	Tributary to Missouri River
10/4/2012	12/7/2012	Between MH # 0536.2 and MH# 0536.1	Two bad joints over storm sewer	Tributary to Missouri River
1/29/2013	1/29/2013	2nd Ave & Vilas, MH 0875 & MH 0935	Grease & debris blockage in MH 0875	Five Mile Creek
4/5/2013	4/5/2013	MH #3352, MH #2287, MH #3344, & MH#2158@ 3412 Iowa	Main blockage	Tributary to Five Mile Creek
4/9/2013	4/9/2013	MH #0593, MH #0592, and creek at 1413 S. 5th Street	MHs backed up from main blockage	Tributary to Missouri River

APPENDIX B: SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Background

The City of Leavenworth, Kansas ("City"), has one wastewater treatment facility ("WWTF") and four lift stations. It utilizes four primary clarifiers, three trickling filters, and UV disinfection. The City is subject to an NPDES permit and an MS4 stormwater permit, both of which were issued by the Kansas Department of Health and Environment.

Supplemental Environmental Project

The City will undertake water quality upgrades as an expansion of its storm sewer project. The City will implement the following improvements to improve water quality in its stormwater system:

Curb inlet modification: The City identified curb inlets that may be improved to add vegetation or turf grass to create a street planter-type inlet. This would improve water quality by reducing pollutants that enter the system by having the low-flow events run over the vegetation, which will act as a filter and provide the opportunity for UV degradation of any pollutants that are deposited on the grass.

Upgrade stream channel: The City identified an area to be improved by planting trees, native grasses and other ecologically enhancing materials. This increased shade improves water temperature at normal flows, and greater vegetation levels increase uptake opportunities of any nutrients that may be deposited or absorbed by the soils.

Bioswale: The City identified two areas that may be suitable for bioswale. This would include adding soil and grass and re-grading an area that takes rainfall resulting in localized runoff and running it over and/or soaking through the bioswale before it goes to the stormwater inlet. This retains the openness of the grassy area for the neighborhood, and would improve water quality by cleaning water before it enters the storm system. It would also allow for UV degradation of any pollutants that may be left on the surface or attached to the vegetation.

The City agrees to ensure proper maintenance for the selected alternatives for a period of two years to provide the project(s) an opportunity to get established and have an opportunity for success.

Supplemental Environmental Project Location

The SEP will be completed in the Ottawa 7th to Broadwater Watershed in 3-Mile Creek's 4L Basin.

Total Supplemental Environmental Project Cost

The City will spend at least \$38,800 on the SEP.

Schedule for Implementation of the Supplemental Environmental Project

The City shall spend at least \$38,800 to implement this SEP within two years of the effective date of this Order.