

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

The City of Weston
102 W. 2nd Street
Weston, WV 26452

Respondent

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. CWA-03-2017-0019DN

I. STATUTORY AND REGULATORY BACKGROUND

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits to Section

402(i) of the Act, 33 U.S.C. § 1342(i). The discharges are subject to specific terms and conditions as prescribed NPDES permit.

5. Federal regulations promulgated pursuant to the CWA define the phrase “waters of the United States” to include, among other things: (1) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate commerce; (iv) tributaries of waters of the United States, and (v) all waters the United States from any point source.” 40 C.F.R. § 122.2.

6. A combined sewer system (CSS) is a wastewater collection system owned by a State or municipality (as defined by Section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a publicly owned treatment works (POTW) (as defined in 40 C.F.R. §403.3). A combined sewer overflow (CSO) is the discharge from a CSS at a point prior to the POTW treatment plant. CSOs are point sources subject to NPDES permit requirements and other requirements of the CWA, including both technology-based and water quality-based requirements.

7. Section 402(q)(1) of the Act, 33 U.S.C. § 1342(q)(1), provides that each NPDES permit, order, or decree issued under Section 402 after December 21, 2000, for a discharge from a CSS shall conform to EPA’s Combined Sewer Overflow Control Policy, April 11, 1994, 59 F.R. 18688-18698 (“CSO Policy”). Among the objectives of the CSO Policy is “[t]o bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA.” 59 Fed. Reg. 18688, 18689 (April 19, 1994). The CSO Policy requires the development and implementation of a Long Term Control Plan (“LTCP”) that, by using CSO controls, will ultimately result in compliance with the requirements of the CWA, including applicable water quality standards. The LTCP must include a post-construction water quality monitoring program adequate to verify compliance with water quality standards and protection of designated uses as well as to ascertain the effectiveness of the CSO controls.

8. “Pollutant” as defined as Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive

materials...heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

9. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of 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.” 40 C.F.R. § 122.26(b)(8)(i).

10. Section 402(a)(2) of the CWA directs the Administrator to prescribe conditions and limitations, including effluent limitations, for NPDES permits to ensure compliance with the requirements of the CWA. 33 U.S.C. § 1342(a)(2). *See also*, 33 U.S.C. § 1311. Effluent limitations as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharge from point sources.

11. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of West Virginia to issue permits within West Virginia on May 10, 1982.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

12. The City of Weston, West Virginia (“Respondent”) is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4). The Weston Sanitary Board, a department of the City of Weston, operates the wastewater treatment plant on behalf of the City.

13. The City of Weston is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

14. At all times relevant to this Order, Respondent has owned and/or operated a municipal wastewater treatment facility (“Facility” or MS4), as that term is defined at 40 C.F.R. § 122.26(b)(8), and which is located at 608 Old Mill Road, Weston, Lewis County, West Virginia.

15. Respondent's MS4 is located within the City of Weston, West Virginia, an urbanized area as determined by the 2000 Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. §122.32(a)(1).

16. City of Weston encompasses a total area of approximately 26 square miles, according to the 2000 Census, and its population is estimated at 4300 residents.

17. Respondent provides sanitary sewer utility service to the municipality, the Town of Jane Lew, and the adjacent communities of Homewood, Bendale, Deanville, Jordanville, McGuire Park, and the collateral environs. Respondent's MS4 is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

18. Respondent's MS4 discharges to the West Fork River. The West Fork River flows to the Monongahela River which flows to the Ohio River, all "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

19. On June 17, 2010, West Virginia Department of Environmental Protection (WVDEP) issued notice to the City of Weston that WV/NPDES Water Pollution Control Permit, NPDES Permit No. WV0028088 to operate and maintain an existing 2.5 million gallons per day (MGD) combined sewer wastewater collection and treatment system. The NPDES Permit authorized the City of Weston to discharge from the Facility in accordance with all the terms and conditions of the NPDES Permit. The NPDES Permit has been administratively extended and remains in effect to date.

Count 1: Failure to Meet Discharge Limitations and Monitoring Requirements

20. Pursuant to 40 C.F.R. § 122.41(l)(4), Reporting Requirements, monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for report results of monitoring of sludge or disposal practices.

21. Section A.A.00 7 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee sample year round for effluent characteristics as listed in the permit. The permittee is required to report this information to WVDEP through their Electronic Discharge Monitoring Report (eDMR) system.

22. Weston has an established history of chronic effluent violations. For all 12 yearly quarters from July 1, 2012 to June 30, 2015, Weston has been in violation of its permit due to effluent exceedances as indicated on their Discharge Monitoring Reports (DMRs). For nine (9) of those 12 quarters, the facility was listed as being in Significant Non-Compliance (SNC).

23. For a period of August 1, 2011 to February 11, 2016, there were 241 recorded DMR violations. Repeated effluent violations of pollutants include, but not limited to, Fecal Coliform, Total Suspended Solids (TSS), Copper, BOD 5-day, and Nitrogen-ammonia.

24. A Permittee's failure to comply with effluent limits under Section A of its NPDES permit is a violation of Section 402 of the CWA. Weston's 241 exceedances of its NPDES Permit is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 2: Failure to Operate and Maintain Properly the UV System

25. Section C.27 (Other Requirements) of Weston's NPDES Permit states: "The permittee shall perform a daily inspection of the ultraviolet disinfection facilities. A written log recording the date of the inspection, the name of the individual performing the inspection, any deficiencies, and any corrective action implemented shall be maintained. The log shall be maintained at the site and available for review by Division personnel."

26. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for Coliform, Fecal to a maximum monthly Geosmin effluent discharge of 200 units per 100 mL, and a maximum daily effluent discharge of 400 units per 100 mL.

27. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this permit. Weston currently utilizes a UV disinfection system, to control, among other things, fecal coliform, and has added a chlorination/de-chlorination system to their process.

28. From February 11-13, WVDEP conducted a Compliance Sampling Inspection (CSI) of Weston's facility. At that time, of the 320 UV lightbulbs in Weston's disinfection

system, the LED indicator lights showed that only 115 were operational. In a follow-up conversation with WVDEP, Weston clarified that only 84 UV bulbs were operational as of February 21, 2014. In addition, Weston kept no daily logs regarding any deficiencies or corrective actions implemented. In additional follow-up conversations, Weston indicated that the bulbs were incorrectly identified as non-operational due to faulty indicator lights.

29. On December 23, 2015, WVDEP conducted a CSI of Weston's Facility. At the time, it was noted that there were two sets of UV bulbs for disinfection but neither set was operating at full capacity. There was a total of 13 bulbs out in the first set and 19 bulbs out in the second set. It was also noted that O&M staff keep records of how many bulbs were out each time they were checked, that the number changed frequently, and that there were no records of bulb replacement.

30. Weston's failure to properly operate and maintain the UV system in compliance with Section C, Paragraph 27, Section A:A.007, and Appendix A.II.1 of its Permit is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

**Count 3: Failure to Operate and Maintain Properly the Dissolved Oxygen (DO)
Probes and Aeration System**

31. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for BOD, 5-day, 20 deg. C to a maximum monthly average effluent discharge of 30 mg/L, BOD, 5-day, 20 deg. C to a maximum daily effluent discharge of 60 mg/L, and BOD, 5 day % removal, dry to a monthly average minimum of 85%. Removal of BOD within the system is dependent on establishing a healthy biomass in the system, which requires a supply of dissolved oxygen through aeration.

32. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this permit. Weston currently utilizes DO probes to monitor the dissolved oxygen content of their water.

33. WVDEP first conducted a CSI on October 12-13, 2011 during which Weston indicated that DO probes, in conjunction with the blowers in the aeration basin, were not working automatically. Weston noted that DO analyzers were originally intended to control the operation of the blowers, but the automated system had not functioned properly since installation so the blowers were operated manually.

34. The 2011 CSI inspection report noted that DO was measured via a handheld meter every morning, and on that day the permittee had measured the DO to be near 20 mg/L. Inspectors noted that at 1130 hours, the DO was measured again and found to be at concentrations of 0.74 mg/L in aeration basin B and to 0.20 mg/L in basin A, significantly lower.

35. At the 2014 CSI, Weston indicated that four different DO probes had been installed at separate clarifier locations to regulate DO to ensure blowers were at their optimum levels. These DO probes were found to be reading significantly lower, when compared to portable handheld meters brought by WVDEP.

36. Weston response to the 2014 CSI was as follows: "The DO system that is currently in place at the WSB plant has had four (4) changes of company representatives, technicians, and support staff. The WSB has contacted the DAS Group who is projected to evaluate the DO problems and compile a solution...." There was no further documentation from Weston to demonstrate that the DO system has been fixed.

37. Weston's October 2, 2015 response to EPA's 308 Request for Information stated that the Variable Frequency Drive (VFD) and DO equipment was initially installed in 2000-02 when the current WWTP was commissioned and have operated sporadically due to the excessive I/I experienced at the plant. Since 2008, Weston has employed various manual and automated techniques in an effort to make the VFD's fully automated and appropriately operational, however, efforts have not been successful.

38. Proper operation and maintenance of DO sensors in conjunction with the aeration system is critical to establishing a healthy biomass in the aeration basins. Weston's failure to properly maintain the DO sensors resulted in a violation of its Permit under Section 402 of the CWA, 33 U.S.C. § 1342.

Count 4: Failure to Operate and Maintain Properly the Clarifiers

39. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for Solids, total suspended to a maximum monthly average effluent discharge of 30 mg/L; Solids, total suspended to a maximum daily effluent discharge of 60 mg/L; and Solids, suspended % removal, dry to a monthly average minimum of 85%.

40. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this permit. Clarifiers are essential to plant processes to not only prevent solids excursions, but to provide return activated sludge to the aeration basins.

41. WVDEP conducted a 2014 CSI, at which high non-settleable solids and excessive turbidity were observed in their Biolac aeration basin. WVDEP also noted that for clarifier #2 and #5, sludge rakes were not operational, causing sludge debris to become septic. Further, inspectors noted that the condition of the Mixed Liquor Suspended Solids (MLSS) in the Biolac aeration basins did not appear sufficient to provide proper treatment characteristics. These conditions have allowed high concentrations of suspended solids to pass through the clarifier.

42. At the 2014 CSI, WVDEP noted that floating sludge clumps were observed in these clarifiers. At the 2015 CSI, WVDEP noted that there was denitrified sludge floating in the clarifiers.

43. At the 2015 CSI, the plant superintendent noted that the number six clarifier rake was non-operational and had been that way for several months, and that the #2 and #5 clarifier rakes that had frequently been broken for prolonged periods of time.

44. Proper operation and maintenance of clarifiers is critical to wastewater treatment operations. Weston's failure to properly maintain the clarifiers is a violation of its Permit under Section 402 of the CWA, 33 U.S.C. § 1342.

Count 5: Failure to Maintain and Operate Properly the Return Activated Sludge

45. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this permit. Return Activated Sludge (RAS) operation is critical to ensuring sludge is active within the aeration basin, for wasting sludge, and for ensuring clarifiers are kept free from debris buildup.

46. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for BOD, 5-day, 20 deg. C to a maximum monthly average effluent discharge of 30 mg/L, BOD, 5-day, 20 deg. C to a maximum daily effluent discharge of 60 mg/L, and BOD, 5 day % removal, dry to a monthly average minimum of 85%. Removal of BOD within the system is dependent on establishing a healthy biomass in the system, which relies on MLSS to be returned to the aeration by the RAS system.

47. At the February 23, 2010 CSI, WVDEP noted that the return activated sludge pump was experiencing failures, and only one "old salvaged" pump was in service.

48. At the 2014 CSI, a three-day inspection, WVDEP noted that sludge appeared to be frozen for, "at least a two day period." In addition, one of two blowers for the return activated sludge was indicated as out of service for at least two weeks.

49. At the 2015 CSI, WVDEP noted that an upgrade to the system installed several years prior which consisted of a separate set of blowers for the RAS airlift, but because they were installed improperly, they had never worked. The RAS airlift is currently operated by a set of air valves which are supposed to be automatic, but are operated manually. Since treatment plant personnel only work an eight hour shift, this mean that sludge is allowed to settle for up to sixteen hours at a time before being returned.

50. Proper operation and maintenance of RAS is critical to wastewater treatment operations. Weston's failure to properly maintain the clarifiers resulted in a violation of its Permit under Section 402 of the CWA, 33 U.S.C. § 1342.

Count 6: Failure to Maintain and Operate Properly the Aeration Basin

51. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this Permit. Weston utilizes aeration basins in their secondary treatment system which treat sludge through the development and maintenance of a biomass of sludge.

52. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for BOD, 5-day, 20 deg. C to a maximum monthly average effluent discharge of 30 mg/L, BOD, 5-day, 20 deg. C to a maximum daily effluent discharge of 60 mg/L, and BOD, 5 day % removal, dry to a monthly average minimum of 85%. Removal of BOD within the system is dependent on establishing a healthy biomass in the system.

53. At the 2010 CSI, the aeration basin was found to have "very little" MLSS.

54. At the 2014 CSI, WVDEP noted that MLSS was of poor quality and had a high suspended solids count. At the 2014 CSI it was indicated that five of the automatic header valves were not functioning on the unit. Weston's response indicated that the first and last header were functioning and that the all units were functioning manually but not automatically.

55. At the 2015 CSI, WVDEP noted that eight air lines were attached to diffusers in the aeration basins and several leaks were noted in those lines.

56. On October 2, 2015, EPA received a Section 308 Response from Weston to its 308 Request for Information sent July 2015 which stated that low-strength wastewater due to I/I was causing a lack of biological growth in their aeration basin. Upon information and belief, the malfunctioning of the header valves, combined with a lack of functioning DO probes, contributed to a lack of biological growth.

57. Weston is in violation of its NPDES permit for failing to properly maintain and operate the aeration basin. Weston's failure to properly maintain the aeration basins resulted in a violation of its Permit under Section 402 of the CWA, 33 U.S.C. § 1342.

III. ORDER

AND NOW, this _____ day of _____, 2016, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

58. Respondent shall take all actions necessary to comply with its WV/NPDES Water Pollution Control permit.

59. Within thirty (30) days of the effective date of this AOC, Respondent shall create and provide to EPA for approval, a Corrective Action Plan (CAP) to include a schedule to repair all deficient system operations at their plant, including UV disinfection system, DO probes/system, Biolac aeration basin, clarifiers, and return activated sludge pumps to meet the specifications of their designed criteria.

60. Within thirty (30) days of Respondent's receipt of any EPA request for modifications, or disapproval, of the CAP required by paragraph 59, above, Respondent shall address and correct all noted deficiencies and resubmit the CAP for EPA approval. EPA retains the right, if the CAP is not approved as provided in this AOC, to order compliance in accordance with a CAP developed by EPA.

61. Respondent shall implement the CAP within thirty (30) days of EPA's approval.

62. Within ninety (90) days of the effective date of this AOC, Respondent shall implement and provide to EPA a Standard Operating Procedure (SOP) for operation and maintenance to include regular inspections of all plant equipment, identification of deficiencies, and response plans to remediate deficiencies. Documentation of the implementation of this SOP is to be kept in a logbook to be filled out by the plant operator.

63. Within ninety (90) days of the effective date of this AOC, Respondent shall provide to EPA a report which shall include an evaluation of the short-term solutions to plant deficiencies that were proposed in the March 2014 Thrasher Preliminary Engineering Report. The evaluation report should detail why each bulleted item under the Recommendations Section was either implemented or not implemented and the rationale supporting each decision.

64. Within 180 days of the effective date of this Order, Respondent shall submit a bi-annual monitoring report and continue to submit bi-annual monitoring reports until permit compliance, as determined by EPA, has been achieved.

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65. As part of the bi-annual monitoring reports, Respondent shall include documentation of sludge monitoring, including information of any records of sludge wasting (from clarifiers), sludge disposal, or sludge characteristic testing.

66. All documents required by Paragraphs 58 through 65 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

All documents required herein shall be submitted to:

Michael Greenwald
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

67. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the

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regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

68. This Order does not constitute a waiver or modification of the terms or conditions of any MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

69. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Order.

70. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

71. By entering into this Order, the Respondent does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

72. This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:



Date: _____

Jon M. Capacasa
Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

For the City of Weston:

Date: 10-31-16


Name

Title

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CERTIFICATION OF SERVICE

I hereby certify that I sent a true and correct copy of the Administrative Order for Compliance to the Weston Sanitary Board via certified mail, return receipt requested, at the address listed below after filing the original with the Regional Hearing Clerk, US EPA Region III, 1650 Arch St., Philadelphia, PA 19103.

Tracey Weber III
Weber & Weber
239 Main Avenue
Weston, WV 26452

Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA Region III

Date:

Philadelphia, Pennsylvania 19103-2029

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4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any

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NPDES permit condition or limitation in an amount not to exceed \$16,000 per day for each day of violation, up to a total penalty amount of \$125,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each day of violation up to a total penalty amount of \$187,500 for violations that occurred between January 12, 2009 and December 6, 2013, and \$20,628/\$257,848 per proceeding for violations that occurred after December 6, 2013.

6. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the West Virginia Department of Environmental Protection (WVDEP) regarding this action, and will mail a copy of this document to the appropriate WVDEP official.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i). The discharges are subject to specific terms and conditions as prescribed in the NPDES permit.

9. Federal regulations promulgated pursuant to the CWA define the phrase "waters of the United States" to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate commerce; (iv) tributaries of waters of the United States, and (v) all waters adjacent to these waters. 40 C.F.R. § 122.2.

10. "Pollutant" as defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials . . . heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

11. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

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12. “Point source” includes Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

13. A combined sewer system (“CSS”) is a wastewater collection system owned by a State or municipality that conveys sanitary wastewaters and storm water through a single-pipe system to a publicly owned treatment works (“POTW”). A Combined Sewer Overflow (“CSO”) is the discharge from a CSS at a point prior to the POTW’s treatment plant. CSOs are point sources subject to NPDES permit requirements and other requirements of the CWA, including both technology-based and water quality-based requirements.

14. Section 402(q)(1) of the Act, 33 U.S.C. § 1342(q)(1), provides that each NPDES permit, order, or decree issued under Section 402 after December 21, 2000, for a discharge from a CSS shall conform to EPA’s Combined Sewer Overflow Control Policy, April 11, 1994, 59 F.R. 18688-18698 (“CSO Policy”). Among the objectives of the CSO Policy is “[t]o bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA.” 59 Fed. Reg. 18688, 18689 (April 19, 1994). The CSO Policy requires the development and implementation of a Long Term Control Plan (“LTCP”) that, by using CSO controls, will ultimately result in compliance with the requirements of the CWA, including applicable water quality standards. The LTCP must include a post-construction water quality monitoring program adequate to verify compliance with water quality standards and protection of designated uses as well as to ascertain the effectiveness of the CSO controls.

15. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body”.

16. Section 402(a)(2) of the CWA directs the Administrator to prescribe conditions and limitations, including effluent limitations, for NPDES permits to ensure compliance with the requirements of the CWA. 33 U.S.C. § 1342(a)(2); see also 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from point sources.

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of West Virginia to issue NPDES permits within West Virginia on May 10, 1982.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

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18. The City of Weston, West Virginia ("Respondent") is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4). The Weston Sanitary Board, a department of the City of Weston, operates the wastewater treatment plant on behalf of the City.

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

20. At all times relevant to this Order, Respondent has owned and/or operated a municipal wastewater treatment facility ("Facility"), as that term is defined at 40 C.F.R. §§ 122.1 and 122.21, and located at 608 Old Mill Road, Weston, Lewis County, West Virginia.

21. Respondent's Facility is located within the City of Weston, West Virginia, an urbanized area as determined by the 2000 Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. §122.32(a)(1).

22. Respondent provides sanitary sewer utility service to the municipality, the Town of Jane Lew, and the adjacent communities of Homewood, Bendale, Deanneville, Jordanville, McGuire Park, and the collateral environs. Respondent's Facility is a "combined sewer system within the meaning of 40 C.F.R. § 122.26(a)(7).

23. Respondent's Facility discharges to the West Fork River. The West Fork River flows to the Monongahela River which flows to the Ohio River, all "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

24. On June 17, 2010, West Virginia Department of Environmental Protection (WVDEP) issued to the City of Weston a WV/NPDES Water Pollution Control Permit, NPDES Permit No. WV0028088, for their operation and maintenance of an existing 2.5 million gallons per day (MGD) combined sewer wastewater collection and treatment system. The NPDES Permit authorizes the City of Weston to discharge from the Facility in accordance with all the terms and conditions of the NPDES Permit. The NPDES Permit has been administratively extended and remains in effect to date.

Count 1: Failure to Meet Discharge Limitations and Monitoring Requirements

25. Pursuant to 40 C.F.R. § 122.41(l)(4), NPDES Permit Reporting Requirements, monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for report results of monitoring of sludge or disposal practices.

26. Section A.A.00 7 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee sample year round for effluent characteristics as listed in the permit. The permittee is required to report this information to WVDEP through their Electronic Discharge Monitoring Report (eDMR) system.

27. Weston has an established history of chronic effluent violations. For all 12 yearly quarters from July 1, 2012 to June 30, 2015, Weston has been in violation of its permit due to

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effluent exceedances as indicated on their DMRs. For nine (9) of those 12 quarters, the facility was listed as being in Significant Non-Compliance (SNC).

28. For the period from August 1, 2011 to February 11, 2016, there were 241 recorded DMR violations. Repeated effluent violations of pollutants include, but not limited to, Fecal Coliform, Total Suspended Solids (TSS), Copper, BOD 5-day, and Nitrogen-ammonia.

29. From August 1, 2011 to February 11, 2016, Respondent failed to comply with effluent limits under Section A of its NPDES Permit in 241 instances each of which is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 2: Failure to Operate and Maintain Properly the UV System

30. Section C.27 (Other Requirements) of Weston's NPDES Permit states: "The permittee shall perform a daily inspection of the ultraviolet disinfection facilities. A written log recording the date of the inspection, the name of the individual performing the inspection, any deficiencies, and any corrective action implemented shall be maintained. The log shall be maintained at the site and available for review by Division personnel."

31. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for Coliform, Fecal to a maximum monthly Geosmin effluent discharge of 200 units per 100 mL, and a maximum daily effluent discharge of 400 units per 100 mL.

32. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this permit. Weston currently utilizes a UV disinfection system, to control, among other things, fecal coliform, and has added a chlorination/de-chlorination system to their process.

33. From February 11 through 13, 2014, WVDEP conducted a Compliance Sampling Inspection (CSI) of Weston's facility. At that time, of the 320 UV lightbulbs in Weston's disinfection system, the LED indicator lights showed that only 115 were operational. In a follow-up conversation with WVDEP, Weston clarified that only 84 UV bulbs were operational as of February 21, 2014. In addition, Weston kept no daily logs regarding any deficiencies or corrective actions implemented. In additional follow-up conversations, Weston indicated that the bulbs were incorrectly identified as non-operational due to faulty indicator lights.

34. On December 23, 2015, WVDEP conducted a CSI of Weston's Facility. At the time, it was noted that there were two sets of UV bulbs for disinfection but neither set was operating at full capacity. There was a total of 13 bulbs out in the first set and 19 bulbs out in the second set. It was also noted that O&M staff keep records of how many bulbs were out each time

they were checked, that the number changed frequently, and that there were no records of bulb replacement.

35. On February 11, 2013, and December 23, 2015, Weston failed to properly operate and maintain the UV system in compliance with Section C, Paragraph 27, Section A.A.007, and Appendix A.II.1 of its NPDES Permit which is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3: Failure to Operate and Maintain Properly the Dissolved Oxygen (DO) Probes and Aeration System

36. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for BOD, 5-day, 20 deg. C to a maximum monthly average effluent discharge of 30 mg/L, BOD, 5-day, 20 deg. C to a maximum daily effluent discharge of 60 mg/L, and BOD, 5 day % removal, dry to a monthly average minimum of 85%. Removal of BOD within the system is dependent on establishing a healthy biomass in the system, which requires a supply of dissolved oxygen through aeration.

37. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this permit. Weston currently utilizes DO probes to monitor the dissolved oxygen content of their water.

38. WVDEP first conducted a CSI on October 12 through 13, 2011 during which Weston indicated that DO probes, in conjunction with the blowers in the aeration basin, were not working automatically. Weston noted that DO analyzers were originally intended to control the operation of the blowers, but the automated system had not functioned properly since installation so the blowers were operated manually. According to WVDEP's 2015 CSI, plant operators are only onsite for 8 hours, indicating that for 16 hours the plant's aeration system does not supply sufficient aeration based on active DO measurements.

39. The 2011 CSI inspection report noted that DO was measured via a handheld meter every morning, and on that day the permittee had measured the DO to be near 20 mg/L. Inspectors noted that at 1130 hours, the DO was measured again and found to be at concentrations of 0.74 mg/L in aeration basin B and to 0.20 mg/L in basin A, significantly lower.

40. At the 2014 CSI, Weston indicated that four different DO probes had been installed at separate clarifier locations to regulate DO to ensure blowers were at their optimum levels. These DO probes were found to be reading significantly lower, when compared to portable handheld meters brought by WVDEP.

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41. Weston response to the 2014 CSI was as follows: “The DO system that is currently in place at the WSB plant has had four (4) changes of company representatives, technicians, and support staff. The WSB has contacted the DAS Group who is projected to evaluate the DO problems and compile a solution....” There was no further documentation from Weston to demonstrate that the DO system has been fixed.

42. Weston’s October 2, 2015 response to EPA’s 308 Request for Information stated that the Variable Frequency Drive (VFD) and DO equipment was initially installed in 2000-02 when the current WWTP was commissioned and have operated sporadically due to the excessive I/I experienced at the plant. Since 2008, Weston has employed various manual and automated techniques in an effort to make the VFD’s fully automated and appropriately operational, however, efforts have not been successful.

43. Since October 12, 2011, Weston has failed to properly maintain the DO sensors in compliance with Section A.A.007 and Appendix A.II.1 of its NPDES Permit which is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 4: Failure to Operate and Maintain Properly the Clarifiers

44. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston’s NPDES Permit requires that the permittee abide by effluent regulations for Solids, total suspended to a maximum monthly average effluent discharge of 30 mg/L; Solids, total suspended to a maximum daily effluent discharge of 60 mg/L; and Solids, suspended % removal, dry to a monthly average minimum of 85%.

45. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston’s NPDES Permit requires that 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 conditions of this permit. Clarifiers are essential to plant processes to not only prevent solids excursions, but to provide return activated sludge to the aeration basins.

46. WVDEP conducted a 2014 CSI, at which high non-settleable solids and excessive turbidity were observed in their Biolac aeration basin. WVDEP also noted that for clarifier #2 and #5, sludge rakes were not operational, causing sludge debris to become septic. Further, inspectors noted that the condition of the Mixed Liquor Suspended Solids (MLSS) in the Biolac aeration basins did not appear sufficient to provide proper treatment characteristics. These conditions have allowed high concentrations of suspended solids to pass through the clarifier.

47. At the 2014 CSI, WVDEP noted that floating sludge clumps were observed in these clarifiers. At the 2015 CSI, WVDEP noted that there was denitrified sludge floating in the clarifiers.

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48. At the 2015 CSI, the plant superintendent noted that the number six clarifier rake was non-operational and had been that way for several months, and that the #2 and #5 clarifier rakes that had frequently been broken for prolonged periods of time.

49. Since February 11, 2014, Weston failed to properly maintain their clarifiers in compliance with Section A.A.007 and Appendix A.II.1 of its NPDES Permit which is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 5: Failure to Maintain and Operate Properly the Return Activated Sludge

50. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this permit. Return Activated Sludge (RAS) operation is critical to ensuring sludge is active within the aeration basin, for wasting sludge, and for ensuring clarifiers are kept free from debris buildup.

51. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for BOD, 5-day, 20 deg. C to a maximum monthly average effluent discharge of 30 mg/L, BOD, 5-day, 20 deg. C to a maximum daily effluent discharge of 60 mg/L, and BOD, 5 day % removal, dry to a monthly average minimum of 85%. Removal of BOD within the system is dependent on establishing a healthy biomass in the system, which relies on MLSS to be returned to the aeration by the RAS system.

52. At the February 23, 2010 CSI, WVDEP noted that the return activated sludge pump was experiencing failures, and only one "old salvaged" pump was in service.

53. At the 2014 CSI, a three-day inspection, WVDEP noted that sludge appeared to be frozen for, "at least a two day period." In addition, one of two blowers for the return activated sludge was indicated as out of service for at least two weeks.

54. At the 2015 CSI, WVDEP noted that an upgrade to the system installed several years prior which consisted of a separate set of blowers for the RAS airlift, but because they were installed improperly, they had never worked. The RAS airlift is currently operated by a set of air valves which are supposed to be automatic, but are operated manually. Since treatment plant personnel only work an eight hour shift, this mean that sludge is allowed to settle for up to sixteen hours at a time before being returned.

55. Since February 23, 2010, Weston failed to properly maintain their return activated sludge system in compliance with Section A.A.007 and Appendix A.II.1 of its NPDES Permit which is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 6: Failure to Maintain and Operate Properly the Aeration Basin

56. Appendix A.II.1 (Operation and Maintenance; Proper Operation and Maintenance) of Weston's NPDES Permit requires that 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 conditions of this Permit. Weston utilizes aeration basins in their secondary treatment system which treat sludge through the development and maintenance of a biomass of sludge.

57. Section A.A.007 (Discharge Limitations and Monitoring Requirements; Outfall 007) of Weston's NPDES Permit requires that the permittee abide by effluent regulations for BOD, 5-day, 20 deg. C to a maximum monthly average effluent discharge of 30 mg/L, BOD, 5-day, 20 deg. C to a maximum daily effluent discharge of 60 mg/L, and BOD, 5 day % removal, dry to a monthly average minimum of 85%. Removal of BOD within the system is dependent on establishing a healthy biomass in the system.

58. At the 2010 CSI, the aeration basin was found to have "very little" MLSS.

59. At the 2014 CSI, WVDEP noted that MLSS was of poor quality and had a high suspended solids count. At the 2014 CSI it was indicated that five of the automatic header valves were not functioning on the unit. Weston's response indicated that the first and last header were functioning and that the all units were functioning manually but not automatically.

60. At the 2015 CSI, WVDEP noted that eight air lines were attached to diffusers in the aeration basins and several leaks were noted in those lines.

61. On October 2, 2015, EPA received a Section 308 Response from Weston to its 308 Request for Information sent July 2015 which stated that low-strength wastewater due to I/I was causing a lack of biological growth in their aeration basin. Upon information and belief, the malfunctioning of the header valves, combined with a lack of functioning DO probes, contributed to a lack of biological growth.

62. Since February 23, 2010 to the present, Weston has failed to properly maintain and operate their aeration basin in compliance with Section A.A.007 and Appendix A.II.1 of its NPDES Permit which is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

III. GENERAL PROVISIONS

63. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

64. Respondent neither admits nor denies the Findings of Fact set forth in this CAFO.

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65. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the Consent Agreement.

66. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

67. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.

68. Respondent shall bear its own costs and attorney fees.

69. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

70. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

71. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of one seventeen thousand five hundred dollars (\$17,500) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

72. The civil penalty amount set forth in Paragraph 68, above, is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

73. Respondent shall pay the civil penalty amount described in Paragraph 68, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 70 through 74, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to "United States Treasury";

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- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

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- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (866) 234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

<http://www.epa.gov/financial/makepayment>

- j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Pamela J. Lazos
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy

Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

75. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

76. The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

77. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

78. The penalty specified in Paragraph 68 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

79. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

80. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

81. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

82. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CAFO. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

83. This CAFO shall apply to and be binding upon the EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

IX. EFFECTIVE DATE

84. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

X. ENTIRE AGREEMENT

85. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

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FOR RESPONDENT,

CITY OF WESTON

Date: 10-31-16

Julie Gulevsky
Insert name and title

Docket No. CWA-03-2017-0025

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Jon M. Capacasa, Director
Water Protection Division

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this _____ day of _____, 2016

Jon C. Capacasa
Director, Water Protection Division
U.S.EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In The Matter of:

Weber & Weber
239 Main Avenue
Weston, WV 26452

Respondents

Class I Proceeding Pursuant to Section
309(g)(2)(A) of the Clean Water Act, 33
U.S.C. § 1319(g)(2)(A)

Docket No. CWA-03-2017-0025

FINAL ORDER

Regional Administrator, U.S. Environmental Protection Agency, Region III, and Respondent, City of Weston have executed a document entitled "Consent Agreement and Final Order," which I hereby ratify as a Consent Agreement 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 (the "Consolidated Rules"). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, and the Consolidated Rules, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the Consent Agreement. This CAFO shall become final and effective 30 days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5).

Joseph J. Lisa, III
Regional Judicial Officer
U.S. EPA, Region III

Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused to be sent a true and correct copy of the Consent Agreement and Final Order (CAFO) filed this day with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, to the following:

Tracey Weber III
Weber & Weber
239 Main Avenue
Weston, WV 26452

Pamela J. Lazos
Sr. Assistant Regional Counsel
U.S. EPA, Region III

Date