

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE UNIFIED GOVERNMENT OF)
WYANDOTTE COUNTY AND THE)
CITY OF KANSAS CITY, KANSAS,)
and THE STATE OF KANSAS,)
)
Defendants.)
_____)

Civ. No. 13-02141-JWL-KGG

STIPULATION OF SETTLEMENT

WHEREAS Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in this action on March 21, 2013 (Dkt. No.1) seeking injunctive relief and civil penalties against Defendant the Unified Government of Wyandotte County and the City of Kansas City, Kansas (“Unified Government”) pursuant to Sections 309(b) and (d) of the Federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. §§ 1319(b) and (d), for the Unified Government’s illegal discharges of pollutants in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), from its sewer and storm water systems and for violations of conditions established in the Unified Government’s National Pollutant Discharge Elimination System (“NPDES”) permits. The State of Kansas is named as a Defendant in this action in order to satisfy the requirement of Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), that the State be joined as a party.

WHEREAS on May 20, 2013, the Court entered a Partial Consent Decree (Dkt. No. 8) which, pursuant to Paragraph 46 of the decree, required the Unified Government to, *inter alia*, submit an Integrated Overflow Control Plan that would “ensure the Unified Government shall achieve and maintain compliance with the requirements of its [Wastewater Treatment Plant] Permits, the [Clean Water Act] and regulations promulgated thereunder, and EPA’s [Combined Sewer Overflow] Policy.”

WHEREAS the EPA approved with conditions the Unified Government’s Integrated Overflow Control Plan, pursuant to the Partial Consent Decree, and on March 23, 2020, following a formal dispute resolution process, approved a Final Integrated Overflow Control Plan, which requires the Unified Government to implement injunctive relief to improve its sewer and storm water systems and address the violations alleged in the Complaint.

WHEREAS pursuant to Paragraph 59 of the Partial Consent Decree, the Integrated Overflow Control Plan will, “without anything further to modify this Consent Decree” be incorporated “as an enforceable part of this Consent Decree.”

WHEREAS the United States and the Unified Government (the “Parties”) agree that it is in the public interest to resolve this matter without litigation and have negotiated this Stipulation of Settlement in good faith to avoid expensive and protracted litigation.

NOW THEREFORE, the Parties, without adjudication or admission of any issue of fact or law, and without any admission of liability by the Unified Government, by and through the undersigned, agree and stipulate as follows:

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 33 U.S.C. § 1319(b).

2. Venue is proper in this District pursuant to 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391 and 1395, because the violations alleged in the Complaint are alleged to have occurred in, and the penalties sought accrued in, this District.

3. For the purposes of this Stipulation of Settlement, or any action to enforce it, the Unified Government consents to the Court's jurisdiction over this Stipulation of Settlement and any such action over the Unified Government and consents to venue in this District.

4. For purposes of this Stipulation of Settlement, the Unified Government agrees that the Complaint states claims upon which relief may be granted pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

5. The obligations of this Stipulation of Settlement apply to and are binding upon the United States and upon the Unified Government and any successors, assigns, or other entities or persons otherwise bound by law.

6. Within twenty business days of entry by this Court of this Stipulation of Settlement, the Unified Government shall pay \$50,000, as a civil penalty to the United States. The Unified Government shall pay this amount by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with written instructions to be provided to the Unified Government, following entry of the Stipulation of Settlement, by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the District of Kansas. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which the Unified Government shall use to identify all payments required to be made in accordance with this Stipulation of Settlement. The FLU will provide the payment instructions to:

Deborah Jonscher
Deputy Chief Financial Officer
Unified Government of Wyandotte County/Kansas City, KS
701 N 7th Street | Suite 330
Kansas City, Kansas 66101
Phone: (913) 573-5847 | Fax: (913) 573-5003
Email: djonscher@wycokck.org

on behalf of the Unified Government. At the time of payment, the Unified Government shall send a copy of the EFT authorization form and the EFT transaction record, which shall state that the payment is for the civil penalty owed pursuant to the Stipulation of Settlement in United States v. Unified Government of Wyandotte Co. and Kansas City, Kansas, et al., case number 13-cv-02141-JWL-KGG and DOJ case number 90-5-1-1-09463, by email to acctsreceivable.CINWD@epa.gov and EESCDCopy.ENRD@usdoj.gov and by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

and

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

7. In the event that the Unified Government does not comply with the obligations of Paragraph 6, above, the Unified Government shall pay a stipulated penalty to the United States in the amount of five hundred dollars (\$500) per each day that the civil penalty remains unpaid. Stipulated penalties shall be paid in the same manner as that provided for in Paragraph 6 for payment of the civil penalty. Further, interest shall accrue on the unpaid balance of civil and/or stipulated penalties in accordance with 28 U.S.C. § 1961 commencing on the date that such

penalties are due and continuing until paid. If the Unified Government does not comply with its obligations in Paragraph 6, then, in addition to other remedies herein, the United States reserves the right to move this Court to vacate this Stipulation of Settlement and reinstate this action.

8. This Stipulation of Settlement resolves all claims for civil penalties of the United States, based upon the facts alleged in its Complaint, for the violations expressly alleged in its Complaint through the date of filing of this Stipulation of Settlement. This Stipulation of Settlement is not intended to, nor shall it be construed to, operate in any way to resolve any criminal liability of the Unified Government or to resolve any civil claims other than those expressly referred to in this Paragraph 8.

9. This Stipulation of Settlement shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Clean Water Act or implementing regulations, or under other laws, regulations, or permit conditions, except as expressly specified in Paragraph 8.

10. This Stipulation of Settlement is not a permit, or a modification of any permit, under any federal, State, or local law or regulation. The Unified Government is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the Unified Government's compliance with this Stipulation of Settlement shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Stipulation of Settlement, warrant or aver in any manner that the Unified Government's compliance with any aspect of this Stipulation of Settlement will result in compliance with provisions of the Clean Water Act, 33 U.S.C. § 1321(b) *et seq.*, or with any other provisions of

federal, State, or local laws, regulations, or permits. The Unified Government or any other person shall not deduct any penalties or stipulated penalties paid under this Stipulation of Settlement in calculating for Federal, State or local tax purposes.

11. The Court shall retain jurisdiction for the purposes of interpreting and enforcing this Stipulation of Settlement through the date that the obligations in Paragraphs 6 and 7 are completed.

12. This Stipulation of Settlement shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid civil and/or stipulated penalties and interest referred to in Paragraphs 6 and 7, above, in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3008, and any other applicable statutory authority without further order of this Court. In the event all or any portion of the penalties referred to in Paragraphs 6 and 7, above, are not paid in accordance with the provisions of this Stipulation of Settlement, the Unified Government shall be liable for attorneys' fees and costs incurred by the United States in collecting any amounts due hereunder.

13. This Stipulation of Settlement does not limit or affect the rights of the Unified Government or of the United States against any third parties not party to this Stipulation of Settlement, nor does it limit the rights of third parties, not party to this Stipulation of Settlement, against the Unified Government, except as otherwise provided by law. This Stipulation of Settlement shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Stipulation of Settlement.

14. Except as to those civil claims expressly alleged in the Complaint and resolved in this Stipulation of Settlement, in any subsequent administrative or judicial proceeding initiated

by the United States for injunctive relief, civil penalties or other appropriate relief relating to the Unified Government's sewer or storm water systems, the Unified Government shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

15. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Stipulation of Settlement and to execute and legally bind the Party he or she represents to this document.

16. The Unified Government consents to the entry of this Stipulation of Settlement without further notice.

17. Except as set forth in Paragraph 12 of this Stipulation of Settlement, each party shall bear its own costs and attorney's fees in this action.

18. This Stipulation of Settlement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied herein and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Stipulation or the settlement it represents, nor shall it be used in construing the terms of this Stipulation.

19. This Stipulation of Settlement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

AS STIPULATED AND AGREED TO BY THE PARTIES, IT IS SO ORDERED AND ADJUDGED:

Date 05/20/2020

s/ John W. Lungstrum
THE HONORABLE JOHN W. LUNGSTRUM
UNITED STATES DISTRICT COURT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 5/18/2020

/s Nathaniel Douglas
NATHANIEL DOUGLAS
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
Washington, D.C. 20530

Date: 5/18/2020

/s Erika M. Wells
ERIKA M. WELLS
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
7600 Sand Point Way NE
Seattle, WA 98115

ALSO FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 5/5/2020

/s Leslie Humphrey
LESLIE HUMPHREY
Acting Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Road
Lenexa, Kansas 66219

Date: 5/5/2020

/s Patricia Gillispie Miller
PATRICIA GILLISPIE MILLER
Senior Counsel, Kansas Bar No. 12096
U.S. Environmental Protection Agency, Region 7
11201 Renner Road
Lenexa, Kansas 66219

ALSO FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: 5/5/2020

/s Mark Pollins
MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

OF COUNSEL:

ERIN GRISBY
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

FOR DEFENDANT UNIFIED GOVERNMENT:

Dated: 5/4/2020

/s David Alvey
David Alvey
Mayor
City Hall
701 N 7th Street
Suite 926
Kansas City, KS 66101
[\(913\) 573-5010](tel:(913)573-5010)

Dated: 5/4/2020

/s Kenneth Moore
Kenneth Moore
Chief Counsel
City Hall
701 N 7th Street
Suite 961
Kansas City, KS 66101
[\(913\) 573-5010](tel:(913)573-5010)