



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Michael J. Linder

Director
Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186
FAX (402) 471-2909
website: www.deq.state.ne.us

DEPARTMENT OF ENVIRONMENTAL QUALITY STATE OF NEBRASKA

CERTIFICATION

I, Ane McBride, Records Manager for the Nebraska Department of Environmental Quality, do hereby certify that the attached is a true and correct copy of public records filed with the Nebraska Department of Environmental Quality.

Ane C. McBride
Records Manager

Witnessed and sworn to before me this 8th day of August, 2007.


Notary Public

(1)



RECEIVED

07 JUL -5 PM 1:53

JUL 17 2007

CITY CLERK
OMAHA, NEBRASKA

City of Omaha
Mike Fahey, Mayor

Public Works Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183-0601
(402) 444-5220
Fax (402) 444-5248

Robert G. Stubbe, P.E.
Public Works Director

RECEIVED

AUG 07 2007

Nebraska Department of
Environmental Quality

Honorable President

and Members of the City Council,

Transmitted herewith is an Ordinance to approve an agreement of the City of Omaha to the Complaint and Compliance Order by Consent providing for settlement and implementation of the Long Term Control Plan for the City of Omaha's Combined Sewer System.

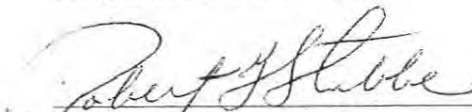
The State of Nebraska Department of Environmental Quality has issued to the City of Omaha an Order of Complaint and Compliance by Consent consistent with applicable law as the most appropriate means of resolving the dispute of the parties and to provide a framework, in the public interest, for the settlement and implementation of the Long Term Control Plan for the City of Omaha's Combined Sewer System.

The Complaint and Compliance Order by Consent (Case No. 2710) is attached.

The Public Works Department requests your consideration and approval of the attached Ordinance.

Respectfully submitted,

Referred to City Council for Consideration:

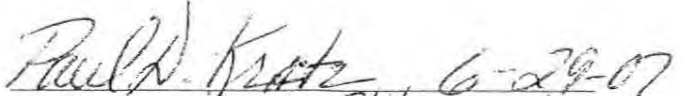

Robert G. Stubbe, P.E. 6-29-07
Public Works Director 462 Date


Mayor's Office 7-3-07
Date

Approved as to Funding:

Approved:


Carol A. Ebdon 7/2/07
Finance Director MA Date


Paul D. Kratz 6-29-07
City Attorney by R. Harms Date



ORDINANCE NO. 37809

AN ORDINANCE approving a Complaint and Compliance Order by Consent issued by the State of Nebraska Department of Environmental Quality in regard to the implementation of a Long Term Control Plan for the City of Omaha's Combined Sewer System in accord with the terms and conditions set forth in the Consent Order (Case No. 2710); to authorize the Mayor to execute the Consent Order; and to provide an effective date hereof.

WHEREAS, the complainant, Michael Linder, Director, Nebraska Department of Environmental Quality (referred to herein as NDEQ) has issued a Complaint and Compliance Order by Consent pursuant to Neb. Rev. Stat. §81-1507 (1) (Reissue 1999) and Neb. Rev. Stat. § 81-1504 (7) (Reissue 1999) of the Environmental Protection Act §81-1501 et seq. (Reissue 1999, Cum Supp. 2006); and,

WHEREAS, the respondent, the City of Omaha, is a body corporate and politic organized under the laws of the State of Nebraska in Douglas County, Nebraska; and,

WHEREAS, the Consent Order to be entered into voluntarily by the NDEQ and the City of Omaha pursuant to the Nebraska Environmental Protection Act provides for corrective action for the City of Omaha's Combined Sewer System; and,

WHEREAS, the purpose of this Consent Order is to provide a framework for settlement of the Long Term Control of the City of Omaha's Combined Sewer System, which is in the public interest, consistent with applicable law, and that, the entry of this Consent Order is the most appropriate means of resolving the dispute of the parties.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That the City Council of the City of Omaha hereby approves the agreement of City of Omaha to the Complaint and Compliance Order by Consent, which by this reference is

made part hereof, providing for settlement and implementation of the Long Term Control Plan for the City of Omaha's Combined Sewer System and a time line for compliance with the Consent Order including possible penalties for non-compliance with the Consent Order.

Section 2. That the Mayor is authorized to execute the Order of Complaint and Compliance of Consent, which provides the terms and conditions agreed upon, with the Nebraska Department of Environmental Quality.

Section 3. That this Ordinance shall take effect and be in full force upon the date of its passage.

INTRODUCED BY COUNCILMEMBER

David G. Walker

APPROVED BY:

Mike Jatey 8/2/07
MAYOR OF THE CITY OF OMAHA DATE

PASSED JUL 31 2007 6-0

ATTEST:

Buster Brown 8/2/07
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

[Signature] 6-29-07
CITY ATTORNEY DATE

P:\PW\15725pjm.doc

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's Office.

[Signature]
Buster Brown, City Clerk, City of Omaha

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE CITY OF OMAHA,
Respondent,

Case No. 2710
COMPLAINT AND COMPLIANCE
ORDER BY CONSENT

1. This Complaint and Compliance Order by Consent (or Consent Order) is issued pursuant to Neb. Rev. Stat. §81-1507 (1). (Reissue 1999) and Neb. Rev. Stat. 81-1504 (7) (Reissue 1999) of the Environmental Protection Act §81-1501 et seq. (Reissue 1999, Cum Supp. 2006). The complainant is Michael Linder, Director, Nebraska Department of Environmental Quality (referred to herein as NDEQ).

2. The respondent, City of Omaha (the City), is a body corporate and politic organized under the laws of the State of Nebraska in Douglas County, Nebraska.

3. The Consent Order is entered into voluntarily by the complainant and the respondent pursuant to the Nebraska Environmental Protection Act (referred to herein as NEPA”) and provides for corrective action as follows herein. The parties agree that settlement of these matters is in the public interest and that entry of this Consent Order is the most appropriate means of resolving the dispute of the parties. The parties further agree that a Consent Order should be issued.

IT IS AGREED AND ORDERED AS FOLLOWS:

4. At all times material herein the respondent City owns and operates a system for wastewater and stormwater treatment. The City's wastewater system collects varieties of wastewater, including domestic sewage, commercial and industrial wastewater, and stormwater. Domestic sewage, commercial and industrial wastewater and during wet weather in some of the older parts of town stormwater is transmitted to one of the City's three wastewater treatment



facilities (WWTF) through the sanitary sewer system, treated to meet standards set by the State and reflected in National Pollutant Discharge Elimination System (NPDES) permits issued by the state, and discharged to waters of the state in Douglas County, and Sarpy County, Nebraska. The discharge of treated wastewater from the WWTFs, provided a variety of conditions are met, is allowed by NPDES permits, one for each WWTF. The NPDES permits for the WWTFs are numbered NE0040096, NE0036358 and NE0112810. Stormwater in some areas of the City's system is collected in pipes dedicated solely to stormwater and is discharged to waters of the state pursuant to an NPDES permit issued to Omaha and known as the MS4 permit, number NE0133698. During wet weather stormwater in other areas, especially older areas of the City, is collected in pipes that were designed to carry at once both stormwater and the other varieties of wastewater. These are commonly called "combined sewers." In times when stormwater flow to these combined sewers is not excessive all the wastewater and stormwater in the combined sewer is carried to the City's WWTFs and treated to meet State standards before discharge to waters of the state. At times of high stormwater flow, however, the volume of stormwater becomes so great in the combined sewers that the large volumes of flow in the system must, so as not to damage the WWTFs and the treatment process and not to back up into dwellings, be diverted away from the WWTFs and discharged without treatment directly into waters of the state. The discharge of untreated combined sewer flow that is diverted away from the WWTFs in conditions of wet weather and high flows is allowed by Omaha's NPDES permit, number NE0133680 issued October 1, 2002 ("CSO Permit").

5. NEPA grants NDEQ the power and duty to act as the state water pollution control agency for all purposes of the federal Clean Water Act, as amended, 33 U.S.C. §§ et seq. (CWA). Neb. Rev. Stat. § 81-1504. (Reissue 1999, Cum Supp. 2006).

6. Section 402 of the CWA, 33 U.S.C. 1342, establishes the NPDES program. Section 402 (q)(1) of the CWA requires that "Each permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 . . ." The Combined Sewer Overflow Control Policy was published at 59 Fed. Reg. 18688, April 19, 1994 ("CSO Policy") and calls for measures to minimize CSO impacts to water quality, aquatic biota, and human health.

7. Pursuant to NEPA at Neb. Rev. Stat. §81-1505 (1) (Reissue 1999, Cum Supp. 2006) the Nebraska Environmental Quality Council duly adopted Title 119, Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System.

8. NDEQ alleges that the City's CSOs while authorized under the CSO Permit and subject to certain CSO Policy requirements through the CSO Permit are not in compliance with Title 117 - Nebraska Water Quality Standards as implemented through Title 119.

9. The parties agree that for purposes of this Consent Order terms shall have the following meanings:

a. A Combined Sewer Overflow (CSO) is the discharge from a combined sewer system at a point prior to the WWTF. CSOs are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment requirements applicable to publicly-owned treatment works.

b. Combined Sewer System shall mean the portion of the City's sewer system that conveys domestic, commercial and industrial wastewaters and stormwater runoff through a single-pipe system to Omaha's WWTFs or CSOs.

c. A Long Term Control Plan ("LTCP") is a plan to address CSOs that will ultimately result in compliance with the CWA and NEPA.

10. The City's CSOs are the result of a wastewater system in the older portions of the City that was designed and constructed in ways that make it inevitable that the City will discharge pollutants to waters of the state from CSOs. The CSO Permit in effect covers wet weather discharges of stormwater mingled with sanitary wastewater, yet such discharges should be reduced and eliminated according to the CSO Policy.

11. In order for the City to achieve compliance with the CSO Policy an evolving effort from assessment, through design and infrastructure construction, is necessary. The parties recognize that it will take the City many years to implement the needed measures included in the LTCP and that this Consent Order is the appropriate mechanism for controlling and assuring completion of these measures. The parties also believe that a number of factors could make exact precision in fulfillment of all the requirements herein difficult to achieve. Among these factors are uncertainty as to how component projects within the LTCP can be funded in the future, fluctuation in costs of the component projects, including labor and material market changes, potential changes in construction standards and legal requirements, unknown physical conditions of soil in the areas where construction is expected to occur, potential unforeseen demographic and infrastructure changes in areas affected by the component projects, unanticipated limitations in engineering or construction capacities in the area, changes in NPDES requirements and Nebraska Water Quality Standards, or other unforeseen problems. The parties pledge their best

efforts to overcome these and other difficulties to implement the LTCP in accordance with this Consent Order. All plans, measures, reports, construction, maintenance, operational requirements and other obligations in this Consent Order or resulting from the activities required by this Consent Order shall have the objective of allowing the City of Omaha to achieve LTCP implementation, excluding post-construction monitoring, by October 1, 2024, and, ultimately, allowing full compliance with the CWA, the CSO Policy, applicable state laws, and the terms and conditions of Omaha's NPDES permits, as the same may be reissued or modified from time to time.

12. The City denies the allegations in paragraph 8 of this Complaint and Consent Order, and by undertaking the obligations set forth herein does not admit any liability, negligence or fault. The City while not admitting the allegations of paragraph 8, nevertheless agrees to the form and content of this Consent Decree for the purposes of settlement.

IT IS FURTHER AGREED AND ORDERED:

13. Force majeure provisions applicable to the parties and this Consent Decree are provided in paragraphs 14 through 21 herein.

14. Omaha shall perform the requirements of this Consent Order within the time limits set forth herein unless the performance is prevented or delayed by events which constitute a force majeure.

15. A force majeure event is defined as any event arising from causes not reasonably foreseeable and beyond the control of the City or its consultants, engineers, or contractors which could not be overcome by due diligence and which delays or prevents performance as required by this Consent Order.

16. Force majeure events do not include unanticipated or increased costs of performance, changed economic or financial conditions, or failure of a contractor to perform or failure of a supplier to deliver unless such failure is, itself, the result of force majeure.

17. If any event occurs that causes or may cause the City to violate any provision of this Consent Order or to delay achievement of the LTCP within the timeframe established herein or delay achievement of any component project within the respective component project implementation time, the City shall notify the NDEQ by telephone within ten (10) business days and in writing within (15) fifteen business days after it becomes aware of events which it knows or should reasonably have known may constitute a force majeure. The City's notice shall provide an estimate of the anticipated length of the delay, including any necessary period of time for demobilization and remobilization of contractors or equipment; a description of the cause for the delay, and a description of the measures taken or to be taken to minimize delay, including a timetable for implementing these measures. Notification to NDEQ by telephone and in writing shall be directed to Donna Garden, or such other person as NDEQ shall subsequently designate in writing. In the event that Donna Garden or subsequent designee is unavailable at the time of any attempt to notify, then notification shall be to another NDEQ employee who shall also be informed specifically that the notification is dictated by this Consent Order in Case No. 2710.

18. Failure to comply with the notice provision shall be grounds for NDEQ to deny granting an extension of time to the City.

19. If the City reasonably demonstrates to NDEQ that the delay has been or will be caused by a force majeure event, NDEQ will consent to an extension of the time for performance for that element of the Consent Order for a period not to exceed the delay resulting from such

circumstances. The City shall not be liable for penalties or any other relief for any period of delay resulting from a force majeure event.

20. If a dispute arises over the occurrence or impact of a force majeure event and cannot be resolved, NDEQ reserves the right to seek enforcement of this Consent Order under Neb. Rev. Stat. §81-1508 and §81-1508.02 (Reissue 1999). In any such dispute, the City shall have the burden of proof that a violation of the Consent Order was caused by a force majeure event. The City reserves the right to exercise and assert any and all defenses to such enforcement action, including, but not limited to the defense of force majeure.

IT IS FURTHER AGREED AND ORDERED:

21. This Consent Order shall not prevent NDEQ from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any NPDES permit to the City, including the necessary modifications to the City's NPDES permits for WWTFs and CSOs to maintain consistency with Nebraska law, NDEQ regulations, the implementation schedule called for herein, and the CSO Policy. The City shall not use this Consent Order as a defense to these permit actions.

22. Failure by the City to comply with this Consent Order shall be grounds for NDEQ to seek appropriate administrative or judicial enforcement of this Consent Order. The City reserves the right to exercise and assert any and all defenses to such enforcement action.

23. This Consent Order may be modified and amended in writing by mutual agreement of the City and NDEQ to address changes in circumstances, events such as those described in paragraph 11, changes in law and regulations, or in response to any facts or circumstances relevant to the City's performance under this Consent Order. NDEQ and the City shall negotiate in good faith with respect to use of this provision. Any modifications of the

obligations of the Parties under this Consent Order shall be effective when in writing executed by the parties and only upon approval of the Director of NDEQ.

24. Notwithstanding NDEQ's review of any plans submitted to NDEQ pursuant to this Consent Order, the City shall remain solely responsible for compliance with the CWA, NEPA, and the rules and regulations promulgated thereto. This Consent Order is not and shall not be construed as a permit, nor a modification of any existing NPDES permit, nor shall it in any way relieve the City of its obligations to obtain permits for its WWTFs and related operations or facilities and to comply with the requirements of any NPDES permit or with any other applicable state or federal law or regulation. The Parties intend that the schedules called forth herein will be consistent with any schedules required pursuant to any NPDES permit issued to the City. Any new permit, or modification of existing permits, shall be complied with in accordance with applicable state or federal laws and regulations.

25. The City, upon completion of all of its obligations hereunder, is entitled to termination of this Consent Order.

26. The NDEQ has jurisdiction of the parties and the subject matter of this action. This complaint filed herein constitutes a justifiable cause of action against the City of Omaha under the Environmental Protection Act, Neb. Rev. Stat. §81-1501 et seq. (Reissue 1999, Cum Supp. 2006).

27. THEREFORE IT IS ORDERED AND AGREED as follows: On or before October 1, 2009, the City of Omaha shall produce and submit to NDEQ for review and approval a final LTCP, including a written schedule of the sequence in which LTCP component projects will be undertaken and the time frame for each component project. The LTCP plan shall be consistent with the CSO Policy, the CSO Permit, the CWA, NEPA and implementing regulations

and shall include sufficient justification and explanation of its component projects for NDEQ to review. The schedule for the order of accomplishment of LTCP component projects shall identify the component projects by location, the engineering or operational means of accomplishment, and the time frames within which the component projects will be commenced and completed. The schedule shall provide for implementation of the LTCP except post-construction monitoring as soon as practicable and in any event by October 1, 2024.

28. THEREFORE IT IS ORDERED AND AGREED that, upon approval of the LTCP and schedule by NDEQ, the City shall implement the LTCP according to the schedule on or before October 1, 2024.

29. THEREFORE IT IS ORDERED AND AGREED that within 30 days following October 1, 2011, and within 90 days following each yearly anniversary thereafter until termination of this Consent Order, the City shall submit written status reports to the Department setting for the following:


- a. A statement identifying each component project time frame in the period preceding the initial, or thereafter, the most recent previous report, calling for commencement, completion, implementation or some other action to be taken, and whether and to what extent such action was taken by the City within the respective component project time frame.
- b. A general description of the work performed pursuant to the LTCP and component project time frame schedule for the period covered by the report and whether it conformed to the LTCP and time frame schedule.
- c. A statement of any future planned or expected deviations from the LTCP and component project time frame schedule and the reasons for such deviations.

30. NOTICE OF OPPORTUNITY TO REQUEST A HEARING AND WAIVER OF HEARING. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 1999) a Respondent may apply for a hearing to contest the Complaint and Compliance Order and by making a request for such hearing to the Director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, relates to the initiation and procedure of such hearings. The City hereby waives its right to a hearing to contest any matters contained in this Consent Order. The waiver does not extend to any hearing to determine compliance with this Order.

31. ADVISEMENT OF POSSIBLE PENALTIES. The Respondent, City of Omaha, is advised that pursuant to Neb. Rev. Stat. § 81-1508.02 (Reissue 1999) any failure to comply with, or violation of, the foregoing Consent Order is grounds for imposition of a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per day, with each day of violation constituting a separate offense. The issuance of this Order does not preclude NDEQ from pursuing enforcement action in court for appropriate relief or for penalties.

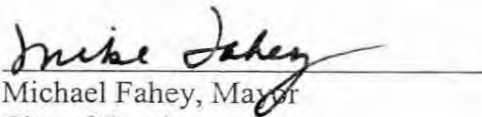
IT IS SO ORDERED AND AGREED BY:

August 8, 2007
Date


Michael J. Linder, Director Nebraska
Department of Environmental Quality

AND AGREED BY:

August 2, 2007
Date


Michael Fahey, Mayor
City of Omaha

ATTEST:

 8/2/07
Buster Brown, City Clerk

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE CITY OF OMAHA,
Respondent,

Case No. 2710
AMENDED COMPLIANCE ORDER

On May 8, 2012, the City of Omaha, the Respondent herein, submitted to the Nebraska Department of Environmental Quality (NDEQ), the Complainant, the City's request for a three year extension to the final implementation date of the CSO Long Term Control Plan (LTCP) from October 1, 2024, to October, 2027. The City claimed Force Majeure under paragraph 15 of the August 8, 2007, Complaint, and Compliance Order by Consent, as the grounds for the extension. The force majeure event in this instance was the 2011 Missouri River Flood.

The NDEQ finds that the flood of 2011 was a force majeure event. It was a flood of exceptional magnitude. It overwhelmed flood precautions taken by diligent and responsible government authorities for hundreds of miles along the Missouri River, including the boundary between Nebraska and Iowa. The City notified NDEQ in writing of its intent to invoke force majeure on June 3, 2011. The City's efforts at design and construction were impeded by the flood.

IT IS THEREFORE ORDERED that paragraphs 27 and 28 of the August 8, 2007, Order are amended as follows:

A. The last sentence of paragraph 27 shall provide: The schedule shall provide for implementation of the LTCP except post-construction monitoring as soon as practicable and in any event by October 1, 2027.


B. Paragraph 28 shall provide: Therefore it is ordered and agreed that, upon approval of the LTCP and schedule by NDEQ, the City shall implement the LTCP according to the schedule on or before October 1, 2027.

IT IS FURTHER ORDERED that the LTCP of 2009 shall be revised and submitted to NDEQ on or before October 1, 2014; the amended LTCP shall address all force majeure related delays. The revision shall be subject to, and contingent upon, approval by NDEQ. Upon approval by NDEQ the LTCP shall be performed by the City according to its terms and schedule.

IT IS FURTHER ORDERED that the remainder of the Order of August 8, 2007, is ratified and confirmed, and the City shall comply with the terms of the Order as amended herein.

IT IS SO ORDERED:

May 30 2012
Date

By: 
Michael J. Linder, Director, Nebraska
Department of Environmental Quality

AFFIDAVIT

STATE OF NEBRASKA | SS
COUNTY OF LANCASTER


The undersigned oath deposes and says that on the 31st day of May, 2012, he caused an exact copy of the attached Amended Compliance Order, to be served by mailing the same in the regular United States Mail, first class, postage prepaid, certified with return receipt requested, addressed as follows:

Jim Suttle, Mayor
City of Omaha
1819 Farnam Street, Suite 300
Omaha, Nebraska 68183

and by United States mail, first class, postage prepaid on the following:


Paul Kratz
City Attorney
1819 Farnam Street, Suite 804
Omaha, Nebraska 68183

Marty Grate
City of Omaha
5600 South 10th Street
Omaha, Nebraska 68107


Timothy J. Doyle, affiant

Subscribed and sworn to before me, a Notary Public, on the 31st day of May, 2012.




Notary Public

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF) **CASE NO. 2710**
THE CITY OF OMAHA,) **AMENDED COMPLIANCE ORDER**
Respondent,)

On July 17, 2017, the City of Omaha, the Respondent herein, submitted to the Nebraska Department of Environmental Quality (NDEQ), the Complainant, the City's request for certain amendments to the August 8, 2007 Consent Order (as amended by the May 30, 2012, Amended Compliance Order). In support of its request, the City has provided to NDEQ a technical memorandum and attachments, collectively referred to as "Basis for Request for Amendment to the Complaint and Compliance Order by Consent." Based on the said documents and agreement of the parties, the Director finds that the August 8, 2007, Consent Order (as amended by the May 30, 2012, Amended Compliance Order) should be and is hereby amended in the following respects:

A. Paragraph 6 shall be amended to read as follows:

6. Section 402 of the CWA, 33 U.S.C. 1342, establishes the NPDES program. Section 402 (q)(1) of the CWA requires that "Each permit, order, or decree issued pursuant to this chapter after December 21, 2000, for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 . . ." The Combined Sewer Overflow Control Policy was published at 59 Fed. Reg. 18688, April 19, 1994 ("CSO Policy"), was incorporated into the Clean Water Act (through the Wet Weather Water Quality Act of 2000), and calls for measures to minimize CSO impacts to water quality, aquatic biota, and human health. The City's CSO compliance objective is to eliminate or capture for treatment no less than 85% by volume of the combined sewage collected in the combined sewer system, during precipitation events on a system wide annual average basis. The success of the City's efforts to capture for treatment or elimination of 85% of the combined sewage will be determined after completion of the LTCP. The parties acknowledge that NDEQ has the authority to reopen and modify the City's NPDES permit and/or this Consent Order as provided in 59 Fed. Reg. 18688 and Paragraph 21. The parties also acknowledge that the City bears the burden of showing compliance with 59 Fed. Reg. 18688.

B. The last sentence of paragraph 27 shall be amended to read as follows:

The schedule shall provide for implementation of the LTCP except post-construction monitoring as soon as practicable and in any event by October 1, 2037.

C. Paragraph 28 shall be amended to read as follows:

28. THEREFORE IT IS ORDERED AND AGREED that, upon approval of the LTCP and schedule by NDEQ, the City shall implement the LTCP according to the schedule on or before October 1, 2037.

IT IS FURTHER ORDERED that the LTCP of 2014 shall be revised and submitted to NDEQ on or before March 1, 2020 for review and approval. The amended LTCP shall address the above changes. The revision shall be subject to, and contingent upon, approval by NDEQ. Upon approval by NDEQ the LTCP shall be performed by the City according to its terms and schedule as implemented through the City's NPDES permits.

IT IS FURTHER ORDERED that the remainder of the August 8, 2007, Consent Order (as amended by the May 30, 2012, Amended Compliance Order) is ratified and confirmed, and the City shall comply with the terms of the Order as amended herein.

IT IS SO ORDERED AND AGREED BY:

1-17-18
Date

By: [Signature]
Jim Macy, Director,
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

AND AGREED TO BY:

Attest:

CITY OF OMAHA, a Municipal
Corporation

[Signature] 1-12-18
City Clerk Date

By: [Signature] 1-12-18
Jean Stothert, Mayor Date



**BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY
NKA NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY**

**IN THE MATTER OF
THE CITY OF OMAHA,
Respondent,**

)
)
)

**CASE NO. 2710
AMENDED COMPLIANCE ORDER**

On August 27, 2019, the City of Omaha, the Respondent herein, submitted to the Nebraska Department of Environment and Energy (NDEE), the Complainant, the City's request for certain amendments to the August 8, 2007 Consent Order (as amended by the May 30, 2012, Amended Compliance Order and the January 17, 2018, Amended Compliance Order).

The City has informed the NDEE that pursuant to paragraph 17 of the Consent Order a Force Majeure event had occurred in the form of flooding on the Missouri River and tributaries and provided documentation of the impact of said Force Majeure event on the ability of the City to prepare and submit an updated LTCP by March 1, 2020.

The NDEE finds that the recent flooding event was a force majeure event that impeded the City's design and construction efforts. Based on the said documents and agreement of the parties, the Director finds that the August 8, 2007, Consent Order (as amended by the May 30, 2012 and January 17, 2018 Amended Compliance Orders) should be and is hereby amended in the following respects:

Paragraph 28 shall be amended to read as follows:

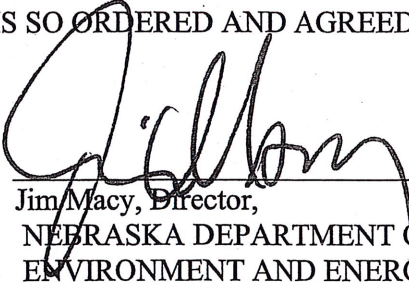
28. THEREFORE IT IS ORDERED AND AGREED that, upon approval of the LTCP and schedule by NDEE, the City shall implement the LTCP according to the schedule on or before October 1, 2037.

IT IS FURTHER ORDERED that the LTCP of 2014 shall be revised and submitted to NDEE on or before March 31, 2021 for review and approval. The amended LTCP shall address the above changes. The revision shall be subject to, and contingent upon, approval by NDEE. Upon approval by NDEE the LTCP shall be performed by the City according to its terms and schedule as implemented through the City's NPDES permits.

IT IS FURTHER ORDERED that the remainder of the August 8, 2007, Consent Order (as amended by the May 30, 2012 and January 17, 2018, Amended Compliance Orders) is ratified and confirmed, and the City shall comply with the terms of the Order as amended herein.

IT IS SO ORDERED AND AGREED BY:

October 16, 2019
Date

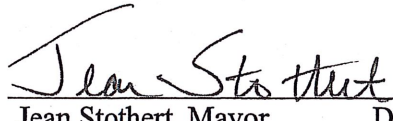
By: 
Jim Macy, Director,
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

AND AGREED TO BY:

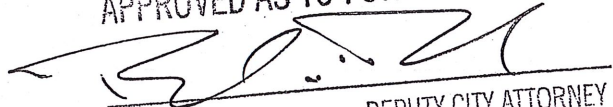
CITY OF OMAHA, a Municipal Corporation

Attest:


City Clerk 10/7/19
Date

By: 
Jean Stothert, Mayor 10/7/19
Date

APPROVED AS TO FORM:


DEPUTY CITY ATTORNEY