

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

UNITED STATES OF AMERICA and )  
THE STATE OF ILLINOIS, )

Plaintiffs, )

v. )

CITY OF ROCKFORD, ILLINOIS, )

Defendant. )  
\_\_\_\_\_ )

Civil Action No. 3:15cv50250

CONSENT DECREE

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Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Illinois (“State”), on behalf of the Illinois Environmental Protection Agency (“Illinois EPA”), have filed a complaint in this action concurrently with the lodging of this Consent Decree alleging that Defendant the City of Rockford, Illinois (“Rockford”), violated Section 301(a) of the Clean Water Act (“Act”), 33 U.S.C. § 1311(a), and Section 12(f) of the Illinois Environmental Protection Act, 415 ILCS 5/12(f) (2014).

The Complaint alleges that Rockford failed to operate its municipal separate storm sewer system (“MS4”) in accordance with the requirements of its National Pollutant Discharge Elimination System (“NPDES”) permit.

Rockford neither admits nor denies any liability to the United States or the State of Illinois arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C.

§ 1391(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the City of Rockford is located in, this judicial district. For purposes of this Consent Decree, or any action to enforce this Decree, Rockford consents to the Court's jurisdiction over this Decree and any such action, and over Rockford, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Rockford agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) of the Act.

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State, and Rockford, and upon any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Rockford Municipal Separate Storm Sewer System, or any part thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Rockford of its obligation to ensure that the terms of the Consent Decree are implemented and maintained. At least 30 days prior to such transfer, Rockford shall provide a copy of this Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Department of Justice, the Illinois Attorney General's Office, and the Illinois Environmental Protection Agency in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of any part or all of the Rockford MS4 without complying with this Paragraph constitutes a violation of this Decree.

5. Rockford shall provide a copy of this Consent Decree to all officers, employees,

and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Decree. Rockford shall condition any such contract entered into after the Effective Date of this Consent Decree upon performance of the work in conformity with the terms of this Decree.

6. In any action to enforce this Consent Decree, Rockford shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree, subject, however, to Rockford's ability to seek relief pursuant to the Force Majeure provisions of Section IX of this Decree.

### III. OBJECTIVES

7. All actions taken pursuant to this Consent Decree, and any attachment thereto, shall have the objective of causing Rockford to achieve and maintain full compliance with the Act, applicable state law, and the terms and conditions of Rockford's MS4 Permit.

### IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act, including the stormwater regulations at 40 C.F.R. § 122.26, shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States and the State of Illinois in this action;

b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto listed in Section XXIII;

c. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Illinois;

d. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

e. “Defendant” shall mean the City of Rockford (“Rockford” or the “City”);

f. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

g. “Effective Date” shall have the definition provided in Section XV;

h. “Illinois EPA” shall mean the Illinois Environmental Protection Agency and any of its successor departments or agencies;

i. “Municipal Separate Storm Sewer System” (“System” or “MS4”) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a city or other legal entity such as Rockford that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. §122.2;

j. “MS4 Permit” shall mean NPDES permit no. ILS000001, issued by the Illinois EPA on April 30, 1996, effective May 1, 1996, and renewed effective December 1, 2004,

and all future modifications, amendments, renewals, or reissuances of this permit. Where this Consent Decree references a specific part, section, or sub-section of the MS4 Permit, it is referring to the 2004 Permit but also includes the relevant substantive successor provisions in any reissued MS4 Permit.

k. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral;

l. “Parties” shall mean the United States, the State of Illinois, and Defendant;

m. “Rockford’s MS4” shall mean the entire Municipal Separate Storm Sewer System owned and operated by Defendant City of Rockford, Illinois;

n. “Section” shall mean a portion of this Consent Decree identified by a roman numeral;

o. “State” shall mean the State of Illinois, including the Illinois Attorney General and the Illinois EPA ;

p. Rockford’s “Stormwater Management Program” or “SWMP” shall mean the management program, as described in Rockford’s Stormwater Management Plan dated August 2015 and attached as Appendix A, that covers the duration of the MS4 Permit;

q. “United States” shall mean the United States of America, acting on behalf of EPA.

V. COMPLIANCE REQUIREMENTS

MS4 Permit Compliance

9. Permit Compliance. Rockford shall comply with all terms and conditions of its MS4 Permit.

MS4 Performance Requirements

10. Pursuant to Rockford's MS4 Permit, Rockford must have a Stormwater Management Plan. Rockford's SWMP dated August 2015 is attached as Appendix A of this Consent Decree.

11. Beginning no later than the Effective Date of this Consent Decree, Rockford shall fulfill the terms of the program elements described in documents contained in Appendices A through N of this Consent Decree exclusive of Appendix D. Beginning no later than the later of January 1, 2016 or the Effective Date of this Consent Decree, Rockford shall fulfill the terms of Appendix D of this Consent Decree.

12. Rockford shall fulfill the terms of Appendix B, *Standard Operating Procedures for Detention Basins*, of this Consent Decree, in accordance with Part II A.2. of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

13. Rockford shall fulfill the terms of Appendix C, *Standard Operating Procedures for Street Sweeping*, of this Consent Decree, in accordance with Part II.A.4. of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

14. Subject to the terms of Paragraph 11, Rockford shall fulfill the terms of Appendix D, *Right-of-Way & Drainageway Inspection & Maintenance Standard Operating Procedures*, of

this Consent Decree, in accordance with Part II.A.2. of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

15. Rockford shall fulfill the terms of Appendix E, *Standard Operating Procedures for City of Rockford Pesticide, Herbicide, and Fertilizer Applications*, of this Consent Decree, in accordance with Part II.A.6. of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

16. Rockford shall fulfill the terms of Appendix F, *Erosion and Sediment Control Plan Review and Regulatory Inspections*, of this Consent Decree, in accordance with Part II A.3.a. of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

17. Rockford shall fulfill the terms of Appendix G, *Erosion and Sediment Control Guidance Manual for City of Rockford Projects*, of this Consent Decree, in accordance with Part II A.3.a of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

18. Rockford shall fulfill the terms of Appendix B, *Standard Operating Procedures for Detention Basins*, and Appendix F, *Erosion and Sediment Control Plan Review and Regulatory Inspections*, of this Consent Decree, in accordance with Part II A.3.b. of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

19. Rockford shall fulfill the terms of Appendix H, *Industrial High Risk Runoff Facility Inspection Program Standard Operating Procedures*, of this Consent Decree, in accordance with Part II A.9 of the Permit or its substantive successor provision in any reissued MS4 Permit.

20. Rockford shall fulfill the terms of Appendix I, *Illicit Discharge Detection and Elimination Program Standard Operating Procedures*, of this Consent Decree, in accordance

with Parts II A.7 and V.B. of the MS4 Permit or their substantive successor provisions in any reissued MS4 Permit.

21. Rockford shall fulfill the terms of Appendix J, *Monitoring and Sampling Program Standard Operating Procedures*, of this Consent Decree, in accordance with Part V.A. of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

22. Rockford shall fulfill the terms of Appendix K, *Stormwater and Environmental Education Standard Operating Procedure*, of this Consent Decree, in accordance with Part II.A of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

23. Rockford shall enforce compliance with the provisions of its SWMP consistent with Appendix L, *Enforcement Response Plan*, of this Consent Decree, in accordance with Part II.A of the MS4 Permit or its substantive successor provision in any reissued MS4 Permit.

#### Funding

24. Beginning no later than the later of January 1, 2016 or the Effective Date of this Consent Decree, funding shall be in an amount sufficient to implement all measures in the SWMP and to comply with the MS4 Permit. In order to ensure that adequate funds are budgeted as required by this Paragraph, Rockford may seek local funding authority or legislation from the General Assembly enabling it to impose a storm water management fee. Nothing herein shall preclude Rockford from using the storm water management fee for the management of storm water generally, including funding flood control projects, so long as adequate funding is maintained to implement all measures in the SWMP, comply with the MS4 Permit, and comply with all the requirements of this Decree.

Legal Authority

25. As of the Date of Lodging of the Consent Decree, Rockford has enacted revisions to its local ordinances that are acceptable to EPA and Illinois EPA.

Permits

26. Where any compliance obligation under this Section requires Rockford to obtain a federal, state, or local permit or approval, Rockford shall submit timely and complete applications and take all other actions necessary under law to obtain all such permits or approvals. Rockford may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Rockford has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. CIVIL PENALTY

27. Within 30 Days after the Effective Date of this Consent Decree, Rockford shall pay the total sum of \$329,395.00 as a civil penalty, \$164,697.50 to the United States, and \$164,697.50 to the State of Illinois, together with interest accruing from the date on which the Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the Date of Lodging.

28. Defendant shall pay the civil penalty due to the United States at <https://www.pay.gov> or by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of

Illinois after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Jeff Miller  
Finance Department  
City of Rockford  
425 East State Street  
Rockford, IL 61104  
779-348-7457  
Jeff.Miller@rockfordil.gov

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

29. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIV; and (iii) to EPA in accordance with Section XIV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America and the State of Illinois v. City of Rockford, Illinois* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-09632.

30. Rockford shall pay the civil penalty due to the State by certified check payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”). Payment shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The case name and case number shall appear on the face of the check. A copy of the certified check and any transmittal letter shall be sent to:

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

31. If Rockford fails timely to tender payment as required in this Section, interest shall continue to accrue in accordance with the provisions of 31 U.S.C. § 3717 until payment is made.

#### VII. REPORTING REQUIREMENTS

32. Defendant shall submit the following reports:

a. By April 1 and October 1 of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, Defendant shall submit to EPA electronically, and by U.S. Mail or courier to both EPA and Illinois EPA, reports for the reporting periods from January 1 through December 31 (the "Annual Report") and January 1 through June 30 (the "Update Report"), respectively. The Annual Report shall conform to the requirements of the Permit and shall include any additional information specified in Appendix M to this Consent Decree; the Update Report shall provide a narrative update of progress for the period covered by that report. Following the submittal of the initial Annual and Update Reports

and as appropriate thereafter, the parties will meet to determine whether to terminate the requirement to submit future Update Reports.

b. If Defendant knows or, in the reasonable exercise of diligence, should have known that it has violated any requirement of this Consent Decree, Defendant shall notify EPA and the State of such violation and its likely duration, in writing, within twenty (20) working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of a violation reported pursuant to this Paragraph and shall then submit an amendment to the report, including a full explanation of the cause of such violation, within forty (40) Days of the Day Defendant becomes aware of the cause of such violation. Such second report shall not be required in any case in which Rockford states in its initial report under this Paragraph that it has identified the cause of the violation reported. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

33. Whenever any violation of this Consent Decree or of the MS4 Permit may pose an immediate and substantial threat to the public health or welfare or the environment or any other event affecting Rockford's performance under the Consent Decree in a manner that may pose an immediate and substantial threat to the public health or welfare or the environment occurs, Rockford shall notify EPA and Illinois EPA orally or by electronic or facsimile transmission to the contacts listed in Paragraph 80 as soon as possible, but no later than 24 hours after Rockford

first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

34. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

35. Each report submitted by Rockford under this Section shall be signed by an official of the submitting party and include the following certification:

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 a fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

36. The reporting requirements of this Consent Decree do not relieve Rockford of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States and the State of Illinois in any proceeding to enforce the provisions of this Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

38. Rockford shall be liable for stipulated penalties to the United States and the State of Illinois for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules by or approved under this Decree.

39. Late Payment of Civil Penalty

If Rockford fails to pay the civil penalty required to be paid under Section VI of this Consent Decree (Civil Penalty) when due, Rockford shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late.

40. Compliance Requirements

The following stipulated penalties shall accrue per violation per day for each violation of the requirements identified in Section V of this Consent Decree:

| <b>Consent Decree Violation</b>                                                                                                                                                  | <b>Stipulated Penalty</b><br>(Per day per violation unless otherwise specified) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| <b>Detention Basins – Subject to the terms of Sections 6.1 and 6.2 of Appendix B, Standard Operating Procedures for Detention Basins, of this Consent Decree, as applicable:</b> |                                                                                 |
| Failure to inspect Public and Priority basins annually as required by Section 6.1 of Appendix B                                                                                  | \$600 per missed inspection.                                                    |

| <b>Consent Decree Violation</b>                                                                                                                                                                    | <b>Stipulated Penalty<br/>(Per day per violation<br/>unless otherwise specified)</b>                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Failure to inspect all known private basins at least once every 2 years as required by Section 6.1 of Appendix B                                                                                   | \$150 per missed inspection first through tenth violation;<br>\$300 per missed inspection eleventh through twentieth violation;<br>\$600 per missed inspection twenty-first violation and subsequent.                                                                                                                                       |
| Failure to complete inspections of all known basin following rainfall events as required by Section 6.2 of Appendix B                                                                              | \$250 per missed inspection per day beyond 72 hours up to seven days after the rainfall event;<br>\$2000 per missed inspection beyond seven days after the rainfall event.                                                                                                                                                                  |
| <b>Street Sweeping – Subject to the terms of Section 5.0 of Appendix C, Street Sweeping Standard Operating Procedures, of this Consent Decree:</b>                                                 |                                                                                                                                                                                                                                                                                                                                             |
| Failure to complete street sweeping and parking lot sweeping each year as required by Section 5.0 of Appendix C                                                                                    | \$50 per mile missed first 100 miles;<br>\$100 per mile missed 101 miles to 200 miles;<br>\$200 per mile missed 201 miles and subsequent;<br>\$50 per parking lot missed, first ten violations;<br>\$100 per parking lot missed, eleventh through twentieth violations;<br>\$150 per parking lot missed twentieth violation and subsequent. |
| <b>Municipal Operations - Subject to the terms of Sections 6 and 10 of Appendix D, Right-of-Way and Drainage Inspection and Maintenance Standard Operating Procedures, of this Consent Decree:</b> |                                                                                                                                                                                                                                                                                                                                             |
| Failure to inspect all ditches and creeks every other year (during even years) as required by Section 6.1 of Appendix D                                                                            | \$100 per mile for the first 20 miles missed (or \$2,000 for the first 20% missed);<br>\$200 per mile for 21-100 miles missed (or \$20,000 for 21%-50% missed);<br>\$300 per mile for 100+ miles missed (or \$150,000 for 51-100%).                                                                                                         |

| <b>Consent Decree Violation</b>                                                                                                                                                                                                                   | <b>Stipulated Penalty<br/>(Per day per violation<br/>unless otherwise specified)</b>                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Failure to inspect City trash racks and remove debris/floatables at least once annually, and prior to and following a rain event as required by Sections 10.1 and 10.2 of Appendix D                                                              | \$400 per missed inspection/maintenance.                                                                                                                                                              |
| Failure to monitor and remove floatables from two monitoring locations at a frequency necessary to prevent flow obstruction but at a minimum of twice a year, and/or failure to report amount collected as required by Section 10.1 of Appendix D | \$400 per missed inspection/maintenance.                                                                                                                                                              |
| <b>Erosion &amp; Sediment Control – Subject to the terms of Section 4.0, 5.3, 6.1 and 6.2 of Appendix F, Erosion and Sediment Control Plan Review and Regulatory Inspections, of this Consent Decree, as applicable:</b>                          |                                                                                                                                                                                                       |
| Failure to review and approve SWPPPs and Erosion and Sediment Control Plans prior to issuing a Grading and Stormwater Discharge Permit or a Building Permit, as applicable, as required by Section 4.0 of Appendix F                              | \$400 per missed review.                                                                                                                                                                              |
| Failure to inspect sites within 2 weeks of start of construction in cases where City is notified by property owner or the City knew or should have known of the start of construction as required by Section 6.1 of Appendix F                    | \$150 per missed inspection first through tenth violation;<br>\$300 per missed inspection eleventh through twentieth violation;<br>\$600 per missed inspection twenty-first violation and subsequent. |
| Failure to complete two full inspections of each IEPA permitted project between May 1 and November 30 and required inspection(s) between December 1 and April 30 as required by Section 6.1 of Appendix F                                         | \$150 per missed inspection first through tenth violation;<br>\$300 per missed inspection eleventh through twentieth violation;<br>\$600 per missed inspection twenty-first violation and subsequent. |
| Failure to conduct monthly inspections in follow-up to an administrative order as required by Section 5.3 of Appendix F                                                                                                                           | \$400 per missed inspection.                                                                                                                                                                          |

| <b>Consent Decree Violation</b>                                                                                                                                                                                                                    | <b>Stipulated Penalty<br/>(Per day per violation<br/>unless otherwise specified)</b>                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Failure to complete a pre-construction inspection on environmentally sensitive areas in cases where City is notified by property owner or the City knew or should have known of the start of construction as required by Section 6.2 of Appendix F | \$400 per missed inspection.                                                                                                                                                                             |
| Failure to conduct a field inspection in response to a citizen complaint within 3 business days as required by Section 5.3 of Appendix F                                                                                                           | \$400 for the first through 14 <sup>th</sup> day;<br>\$1,000 for the 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>and \$1,250 for the 31 <sup>st</sup> day and beyond.                              |
| <b>Erosion &amp; Sediment Control for City Projects – Subject to Section 4.2 of Appendix G, Erosion and Sediment Control Guidance Manual for City of Rockford Projects, of this Consent Decree:</b>                                                |                                                                                                                                                                                                          |
| Failure to submit an NOI and SWPPP for City projects prior to commencing construction as required by Section 4.2 (a) or (b), or as directed pursuant to Section 4.2(c) of Appendix G                                                               | \$400 for the first through 14 <sup>th</sup> day;<br>\$1,000 for the 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>and \$1,250 for the 31 <sup>st</sup> day and beyond.                              |
| <b>Industrial High Risk Runoff – Subject to the terms of Section 4.0 of Appendix H, Industrial High Risk Runoff Facility Inspection Program Standard Operating Procedures, of this Consent Decree:</b>                                             |                                                                                                                                                                                                          |
| Failure to review & update the industrial list annually as required by Section 4.0 of Appendix H                                                                                                                                                   | \$400 for the first through 14 <sup>th</sup> day;<br>\$1,000 for the 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>and \$1,250 for the 31 <sup>st</sup> day and beyond.                              |
| Failure to conduct a field inspection in response to citizen complaints within 72 hours as required by Section 4.0 of Appendix H                                                                                                                   | \$400 per inspection per day beyond 72 hours for the first through the 14 day;<br>\$1,000 for the 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>and \$1,250 for the 31 <sup>st</sup> day and beyond. |
| <b>Illicit Discharge Detection &amp; Elimination – Subject to the terms of Sections 5.2, 5.3 and 5.4 of Appendix I, Illicit Discharge Detection and Elimination Program Standard Operating Procedures, of this Consent Decree, as appropriate:</b> |                                                                                                                                                                                                          |

| <b>Consent Decree Violation</b>                                                                                                                                                                  | <b>Stipulated Penalty<br/>(Per day per violation<br/>unless otherwise specified)</b>                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Failure to initiate an investigation in response to employee-generated complaints within 3 business days as required by Section 5.2 of Appendix I                                                | \$400 per inspection per day beyond 3 business days for the first through the 14 <sup>th</sup> day;<br>\$1,000 for the 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>and \$1,250 for the 31 <sup>st</sup> day and beyond. |
| Failure to conduct a field investigation in response to citizen complaints within 3 business days as required by Section 5.3 of Appendix I                                                       | \$400 per inspection per day beyond 3 business days for the first through the 14 <sup>th</sup> day;<br>\$1,000 for the 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>and \$1,250 for the 31 <sup>st</sup> day and beyond. |
| Dry Weather Screening: Failure to inspect all outfalls every even year as required by Section 5.4 of Appendix I                                                                                  | \$150 per missed outfall 1 <sup>st</sup> through 14 <sup>th</sup> day;<br>\$300 per missed outfall 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>\$600 per missed outfall for 31 <sup>st</sup> day and beyond.            |
| <b>Training – Subject to the terms of Section 2 of Appendix K, Stormwater and Environmental Education Standard Operating Procedures, of this Consent Decree:</b>                                 |                                                                                                                                                                                                                               |
| Failure to ensure that all staff received training in accordance with the requirements of Section 2 of Appendix K                                                                                | \$400 per missed training per person.                                                                                                                                                                                         |
| <b>Monitoring and Sampling Program – Subject to the terms of Section 5 of Appendix J, Monitoring and Sampling Program Standard Operating Procedures, of this Consent Decree:</b>                 |                                                                                                                                                                                                                               |
| Failure to conduct tributary monitoring and wet weather outfall monitoring as required by Sections 5.1.2 and 5.2.2 of Appendix J                                                                 | \$400 per missed outfall or sampling location.                                                                                                                                                                                |
| <b>Funding, Personnel and Equipment</b>                                                                                                                                                          |                                                                                                                                                                                                                               |
| Failure to provide funds for each operating year in an amount sufficient to implement all measures in the SWMP and to comply with the MS4 Permit pursuant to Paragraph 24 of this Consent Decree | \$50,000 per budget year.                                                                                                                                                                                                     |

| <b>Consent Decree Violation</b>                                                                                                                                                                                          | <b>Stipulated Penalty<br/>(Per day per violation<br/>unless otherwise specified)</b>                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Failure to timely seek special legislation by State legislature enabling Rockford to impose a storm water management fee pursuant to Paragraph 24 of this Consent Decree pursuant to Paragraph 24 of this Consent Decree | \$400 for the first through 14 <sup>th</sup> day;<br>\$1,000 for the 15 <sup>th</sup> through 30 <sup>th</sup> day;<br>and \$1,250 for the 31 <sup>st</sup> day and beyond. |

41. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII of this Consent Decree:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$ <u>250</u>                        | 1st through 14th day           |
| \$ <u>1,000</u>                      | 15th through 30th day          |
| \$ <u>3,000</u>                      | 31st day and beyond            |

42. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

43. Rockford shall pay any stipulated penalty within 30 days of receiving the United States' written demand. Stipulated penalties shall be paid 50% to the United States and 50% to the State of Illinois in accordance with the payment provision in Paragraphs 28 and 30.

44. The United States, after consultation with the State, may in the unreviewable exercise of its discretion reduce or waive stipulated penalties otherwise due to it under this Consent Decree.

45. Stipulated penalties shall continue to accrue as provided in Paragraphs 39-42 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Rockford shall pay accrued penalties determined to be owing, together with interest, to the United States and the State within 30 days of the Effective Date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States and State prevail in whole or in part, Rockford shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Rockford shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

46. Rockford shall pay stipulated penalties owing to the United States and the State in the manner set forth in Paragraphs 28 and 30 and with the confirmation notices required by Paragraphs 29 and 30, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

47. If Rockford fails to pay stipulated penalties according to the terms of this Consent Decree, Rockford shall be liable for interest on such penalties, as provided for in 28 U.S.C.

§ 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States and the State from seeking any remedy otherwise provided by law for Rockford's failure to pay any stipulated penalties.

48. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State (including, but not limited to, statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt) for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act or the conditions of its MS4 permit, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### IX. FORCE MAJEURE

49. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Rockford, of any entity controlled by Rockford, or of Rockford's contractors that delays or prevents the performance of any obligation under this Decree despite Rockford's best efforts to fulfill the obligation. The requirement that Rockford exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include Rockford's financial inability to perform any obligation under this Decree.

50. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree Rockford shall provide notice to EPA and Illinois EPA orally or by electronic or facsimile transmission to the contacts listed in paragraph 80 within 96 hours of when Rockford first knew that the event might cause a delay. Within seven business days thereafter, Rockford shall provide in writing to EPA and Illinois EPA an explanation and description of: a) the reasons for the delay; b) the anticipated duration of the delay; c) all actions taken or to be taken to prevent or minimize the delay; d) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; e) Rockford's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and f) a statement as to whether, in the opinion of Rockford, such event may cause or contribute to an endangerment to public health, welfare or the environment. Rockford shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Rockford from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Rockford shall be deemed to know of any circumstance of which Rockford, any entity controlled by Rockford, or Rockford's contractors knew or should have known.

51. If EPA, after a reasonable opportunity for review and comment by Illinois EPA, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by Illinois EPA, for such time as is necessary to complete those obligations. An extension of the

time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Rockford in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

52. If EPA, after a reasonable opportunity for review and comment by Illinois EPA, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Rockford in writing of its decision.

53. If Rockford elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Rockford shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Rockford exercised best efforts to avoid and mitigate the effects of the delay, and that Rockford complied with the requirements of Paragraphs 49 and 50 above. If Rockford carries this burden, the delay at issue shall be deemed not to be a violation by Rockford of the affected obligation of this Consent Decree.

#### X. DISPUTE RESOLUTION

54. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. Rockford's failure to seek resolution of a dispute under this Section shall preclude Rockford from raising any issue as a defense to an action by the United States or State to enforce any obligation of Rockford arising under this Decree.

55. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Rockford sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve the dispute by informal negotiations, then the position advanced by the United States, after consultation with the State, shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Rockford invokes formal dispute resolution procedures as set forth below.

56. Formal Dispute Resolution. Rockford shall invoke formal dispute resolution procedures within the time period provided in the preceding Paragraph by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Rockford's position and any supporting documentation relied upon by Rockford.

57. The United States, after consultation with the State, shall serve its Statement of Position within 45 Days of receipt of Rockford's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Rockford, unless Rockford files a motion for judicial review of the dispute in accordance with the following Paragraph. An administrative record of the dispute ("Administrative Record") shall be maintained by EPA and

shall contain all Statements of Position, including supporting documentation, submitted pursuant to Paragraph 56 and this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute. The Director of the Water Division will issue a final decision (“Administrative Decision”) resolving the matter in dispute. The decision of the Director of the Water Division shall be binding upon Defendant, subject only to the right to seek judicial review, in accordance with the following Paragraph.

58. Rockford may seek judicial review of the Administrative Decision by filing with the Court and serving on the United States and the State, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion shall be filed within 14 Days of receipt of the Administrative Decision pursuant to the preceding Paragraph. The motion shall contain a written statement of Rockford’s position on the matter in dispute shall set forth the relief requested and any schedule within which the dispute shall be resolved for orderly implementation of the Decree.

59. The United States shall respond to Rockford’s motion within the time period allowed by the Local Rules of this Court. Rockford may file a reply memorandum, to the extent permitted by the Local Rules.

60. Standard of Review. In any dispute under this Section, the City shall bear the burden of demonstrating by a preponderance of the evidence that its position clearly complies with this Consent Decree and the Clean Water Act. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and the City reserves the right to oppose any such argument.

61. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Rockford under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 45. If Rockford does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

62. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Rockford or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Rockford's compliance with this Consent Decree.

63. Upon request, Rockford shall provide EPA, the State, or their authorized representatives splits of any samples taken by Rockford. Upon request, EPA shall provide Rockford splits of any samples taken by EPA.

64. Until three years after the termination of this Consent Decree, Rockford shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, that relate in any manner to Rockford's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or State, Rockford shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

65. At the conclusion of the information-retention period provided in the preceding Paragraph, Rockford shall notify the United States and the State at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Rockford shall deliver any such documents, records, or other information to EPA or Illinois EPA. Rockford may assert that certain documents, records, or other information is/are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Rockford asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Rockford.

However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

66. Rockford may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2 and 35 Ill. Adm. Code 130.101, *et seq.* As to any information that Rockford seeks to protect as CBI, Rockford shall follow the procedures set forth in 40 C.F.R. Part 2 and 35 Ill. Adm. Code 130.101, *et seq.*

67. This Consent Decree does not limit or affect any right of entry or inspection, or any right to obtain information held by the United States or the State pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation imposed by applicable federal or state laws, regulations, or permits on Rockford to maintain documents, records, or other information.

## XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

68. This Consent Decree resolves the claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

69. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 68. This Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, under applicable State laws or regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 68.

70. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Rockford's MS4, whether related to the violations addressed in this Consent Decree or otherwise.

71. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to Rockford's MS4, Rockford shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to paragraph 68 of this Section.

72. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Rockford is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits, and Rockford's compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Decree, warrant or aver in any manner that Rockford's compliance with any aspect of this Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

73. This Consent Decree does not limit or affect the rights of Rockford, the State, or the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Rockford, except as otherwise provided by law.

74. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

75. Nothing in this Consent Decree limits the rights or defenses available under Section 309(e) of the Act, 33 U.S.C. § 1319(e), in the event that the laws of the State, as currently or hereafter enacted, may prevent Rockford from raising the revenues needed to comply with this Decree.

### XIII. COSTS

76. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Rockford.

### XIV. NOTICES

77. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email:

[eesdcopy.enrd@usdoj.gov](mailto:eesdcopy.enrd@usdoj.gov)

Re: DJ # 90-5-1-1-09632

and

[olson.erik@epa.gov](mailto:olson.erik@epa.gov)

As to the United States by mail:

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-09632

and

Erik Olson  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard (C-14J)  
Chicago, Illinois 60604-3590

As to EPA:

Erik Olson  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard (C-14J)  
Chicago, Illinois 60604-3590

Felicia Chase  
Environmental Scientist  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard (WC-15J)  
Chicago, Illinois 60604-3590

As to the State of Illinois:

Jennifer A. Van Wie (or designee)  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington, Suite 1800  
Chicago, Illinois 60602

Manager, Compliance Assurance Section  
Bureau of Water, Division of Water Pollution Control  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Mail Code CAS 19  
Springfield, IL 62794-9276

Thomas Williams  
Field Operations Section  
Rockford Regional Office  
Illinois Environmental Protection Agency  
4302 North Main Street  
Rockford, Illinois 61103

As to Rockford:

Patrick Hayes, Legal Director  
City of Rockford  
425 East State Street  
Rockford, Illinois 61104

Richard S. Davis  
Beveridge & Diamond PC  
1350 I Street, N.W., Suite 700  
Washington, D.C. 20005

78. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

79. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

80. Notices submitted pursuant to Paragraphs 33 and 50 for oral, electronic, or facsimile transmission shall go to:

Felicia Chase, Enforcement Officer  
Water Division  
U.S. Environmental Protection Agency  
Region 5  
Telephone: (312)886-0240  
Email: [chase.felicia@epa.gov](mailto:chase.felicia@epa.gov)  
Fax: (312)582-5849

Thomas Williams  
Field Operations Section  
Rockford Regional Office  
Illinois Environmental Protection Agency  
Telephone: (815) 987-7760  
Email: [thomas.williams@illinois.gov](mailto:thomas.williams@illinois.gov)  
Fax: (815) 987-7005

#### XV. EFFECTIVE DATE

81. The Effective Date of this Consent Decree shall be the date upon which this Decree is entered by the Court or a motion to enter the Decree is granted, whichever occurs first, as recorded on the Court's docket, provided, however, that Rockford hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

82. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

83. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

84. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 60, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

85. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or inadequate specifications on the part of Rockford shall not be cause for extension of any required compliance date in this Consent Decree.

XVIII. TERMINATION

86. After Rockford has achieved initial compliance with the requirements of Section V (Compliance Requirements) of this Consent Decree, has thereafter maintained satisfactory

compliance with this Decree and Rockford's MS4 Permit for a period of three years, and has paid the civil penalty and any accrued stipulated penalties as required by this Decree, Rockford may serve upon the United States and the State a Request for Termination, stating that Rockford has satisfied those requirements, together with all necessary supporting documentation.

87. Following receipt by the United States and the State of Rockford's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Rockford has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

88. If the United States does not agree that the Consent Decree may be terminated, Rockford may invoke Dispute Resolution under Section X of this Decree. However, Rockford shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 56 of Section X, until 120 days after service of its Request for Termination.

#### XIX. PUBLIC PARTICIPATION

89. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States, after consultation with the State, reserves the right to withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Rockford consents to entry of this Decree without further notice and agrees not to withdraw from or oppose entry of this Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified Rockford in writing that it no longer supports entry of the Decree.

**XX. SIGNATORIES/SERVICE**

90. Each undersigned representative of Rockford, the State, EPA, Illinois EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

91. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Rockford agrees to accept service of process by mail with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXI. INTEGRATION**

92. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to Section V of this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

93. Upon approval and entry of this Consent Decree by the Court, this Decree shall constitute a final judgment of the Court as to the United States, the State, and Rockford.

XXIII. APPENDICES

94. The following appendices are attached to and part of this Consent Decree:

Appendix A: Rockford's Stormwater Management Plan (excluding attachments)

Appendix B: Standard Operating Procedures for Detention Basins;

Appendix C: Standard Operating Procedures for Street Sweeping;

Appendix D: Standard Operating Procedures for Right-of-Way & Drainageway Inspection & Maintenance;

Appendix E: Standard Operating Procedures for City of Rockford Pesticide, Herbicide, and Fertilizer Applications;

Appendix F: Standard Operating Procedures for Erosion and Sediment Control Plan Review and Regulatory Inspections;

Appendix G: Erosion and Sediment Control Guidance Manual for City of Rockford Projects;

Appendix H: Standard Operating Procedures for Industrial High Risk Runoff Facility Inspection Program;

Appendix I: Standard Operating Procedures for Illicit Discharge Detection and Elimination (IDDE) Program;

Appendix J: Standard Operating Procedures for Monitoring and Sampling Program;

Appendix K: Standard Operating Procedures for Stormwater and Environmental Education;

Appendix L: Enforcement Response Plan;

Appendix M: Annual Reporting Requirements under Paragraph 32; and  
Appendix N: Technical Manual.

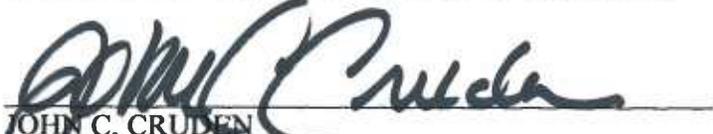
Dated and entered this \_\_ day of \_\_\_\_\_, 2015.

---

UNITED STATES DISTRICT JUDGE  
Northern District of Illinois

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Illinois v. City of Rockford, Illinois*.

FOR PLAINTIFF UNITED STATES OF AMERICA:

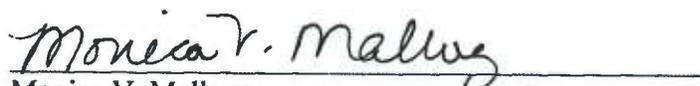
  
\_\_\_\_\_  
JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

DATE: 10/6/15

  
\_\_\_\_\_  
Anna E. Cross  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-1671  
anna.cross@usdoj.gov

DATE: 9/29/15

ZACHARY T. FARDON  
United States Attorney  
Northern District of Illinois

  
\_\_\_\_\_  
Monica V. Mallory  
Assistant United States Attorney  
327 South Church Street, Suite 3300  
Rockford, Illinois 61101  
(815) 987-4444  
monica.mallory@usdoj.gov

DATE: 9/28/15

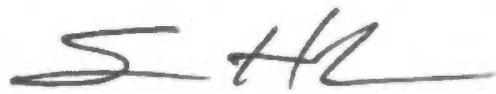
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Illinois v. City of Rockford, Illinois*.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

9/28/2015

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5:

  
\_\_\_\_\_  
SUSAN HEDMAN  
Regional Administrator  
United States Environmental Protection Agency  
Region 5 (R-19J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

DATE: 9/24/2015

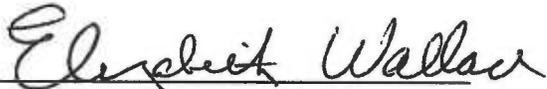
  
\_\_\_\_\_  
ERIK H. OLSON  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 5 (C-14J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

DATE: 9/23/15

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Illinois v. City of Rockford, Illinois*.

FOR PLAINTIFF THE PEOPLE OF THE STATE OF ILLINOIS:  
*ex rel.* LISA MADIGAN, Attorney General of the State of Illinois

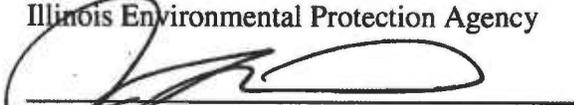
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos Litigation Division

BY:   
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

DATE: 9/28/15

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

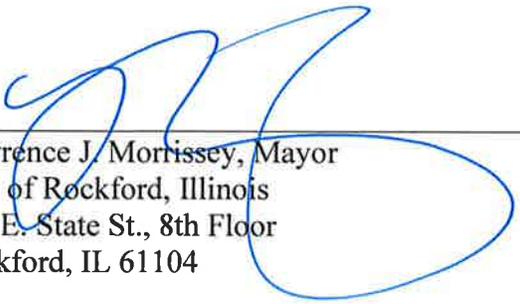
LISA BONNETT, Director  
Illinois Environmental Protection Agency

  
JOHN J. KIM  
Chief Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

DATE: 9/25/15

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the State of Illinois v. City of Rockford, Illinois*.

FOR THE CITY OF ROCKFORD:



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Lawrence J. Morrissey, Mayor  
City of Rockford, Illinois  
425 E. State St., 8th Floor  
Rockford, IL 61104

DATE: September 23, 2015