



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

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Eric J. Callisto
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September 11, 2002

Linda Uliss Burke
Special Deputy City Attorney
Office of City Attorney
City of Milwaukee
200 East Wells Street
Milwaukee, WI 53202-3551

T. Michael Schober, Esq.
Schober Schober & Mitchell, S.C.
16845 W. Cleveland Avenue
P.O. Box 510233
New Berlin, WI 53151-0233

Re: *State v. City of Milwaukee and Advanced Sewer & Water, Inc.*
State v. City of Milwaukee

Dear Counsel:

Please find enclosed all the documents necessary to both file and resolve the above matters. As with previous communications, I have sent to Mr. Schober only those documents relevant to the single case against his client.

As relevant to the complaint against both defendants, and at the City of Milwaukee's request, I have changed the judgment to eliminate paragraph 7, which retained continuing jurisdiction of the court. I have also made the minor changes requested by the City on the settlement documents germane to them.

I ask Mr. Schober to execute the four original copies of the settlement document and forward them promptly to Ms. Uliss Burke, who has been provided only a copy at this point. I understand that she will then present them to the Common Council at the next convenient opportunity. I also understand that, assuming the Common Council's approval of the resolution, the City of Milwaukee will execute the documents and then return them to me for filing with the

Linda Uliss Burke
T. Michael Schober
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Page 2

court. One of the originals is for the City, and the others are for the Court, the State, and ASW. I anticipate a similar course of action on the complaint against the City of Milwaukee only.

If you have any questions, please call. Thank you for the cooperation and good faith shown in this process.

Sincerely,



Eric J. Callisto
Assistant Attorney General

Enclosures

c: James Ritchie, DNR
Deborah Roszak, DNR
Vanessa Thompson, DNR
Deborah Thornton, DOJ
File (w/ enc.)

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN

17 West Main Street

P.O. Box 7857

Madison, WI 53707-7857,

Plaintiff,

v.

Case No.

Unclassified - Civil: 30703

CITY OF MILWAUKEE

200 East Wells Street

Room 205

Milwaukee, WI 53202,

and

ADVANCED SEWER & WATER, INC.

2479 S. Green Links Drive

P.O. Box 27097

West Allis, WI 53227,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

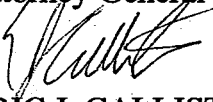
You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Milwaukee County Courthouse, Room 104, 901 North Ninth Street, Milwaukee, Wisconsin 53233, and to Eric J. Callisto, Assistant Attorney General, plaintiff's attorney, whose address is Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 11th day of September, 2002.

JAMES E. DOYLE
Attorney General


ERIC J. CALLISTO
Assistant Attorney General
State Bar #1023016

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 261-8127

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

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Milwaukee, WI 53202

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ADVANCED SEWER &
WATER, INC.
2479 S. Green Links Drive
P.O. Box 27097
West Allis, WI 53227,

Defendants.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

CIVIL COMPLAINT

The State of Wisconsin by its counsel, Attorney General James E. Doyle and Assistant Attorney General Eric J. Callisto, brings this complaint seeking forfeitures and injunctive relief against the defendants City of Milwaukee and Advanced Sewer &

Water, Inc., at the request of the Wisconsin Department of Natural Resources ("DNR") pursuant to Wis. Stat. §§ 30.03(2), 283.89, and 283.91, and alleges as follows:

1. Plaintiff is a sovereign state of the United States of America with its seat of government and offices at the State Capitol in Madison, Dane County, Wisconsin.
2. Defendant City of Milwaukee is a municipality in the County of Milwaukee.
3. Defendant Advanced Sewer & Water, Inc. ("ASW") is a domestic corporation whose registered agent is Steven S. Klomsten. ASW is located at 2479 S. Green Links Drive, West Allis, Wisconsin.

Background Facts

4. On or about December 7, 1999, the City of Milwaukee began a watermain relocation project in the Root River at a location adjacent to the Layton Avenue Bridge and 99th Street, in the County of Milwaukee (hereinafter referred to as "the project").
5. The Root River is a navigable waterway as the term is defined by the laws of the State of Wisconsin.
6. The City of Milwaukee hired ASW to assist in completion of the project.
7. ASW's responsibilities on the project included, *inter alia*, actual construction and subcontracting to complete plans and inspections prepared or authorized by other relevant entities.

8. At some point no later than March 6, 2000, ASW began dredging in the Root River as part of the project. Dredging spoils from the project were deposited along the banks of the river and in an adjacent wetland.

9. Prior to initiating the dredging, neither ASW nor the City of Milwaukee applied for or received a permit pursuant to Wis. Stat. § 30.20.

10. At some point no later than March 6, 2000, ASW placed a variety of material and structures in the Root River as part of the project, including a new water main, sheet piling, dredging material, an earthen dam, gravel, silt fencing and discharge of pit-dewatering slurry.

11. Prior to placing material and structures in the Root River as part of the project, neither ASW nor the City of Milwaukee applied for or received a permit pursuant to Wis. Stat. § 30.12.

12. The City of Milwaukee maintained oversight of the project through the use of onsite representatives. Such representatives were present during the dredging and placement activities described in the previous paragraphs, or were aware of such activities shortly after completion.

13. As a result of the unpermitted dredging and placement activities described in the previous paragraphs, extensive damage has been done to the Root River and the adjacent wetland, including, *inter alia*, deleterious compaction of wetland soils, deposition of damaging spoils and other materials into the river and wetland, and destruction of wetland functions.

14. On March 21, 2000, and pursuant to Wis. Stat. § 893.80(1), the DNR sent to the City of Milwaukee a Notice of Claim concerning the city's actions on the project.

15. Wisconsin Stat. § 30.03(2) authorizes the Attorney General, at DNR's request, to enforce Wis. Stat. ch. 30.

16. Wisconsin Stat. §§ 283.89(1) and 283.91(1) authorize the Department of Justice, upon referral from DNR, to enforce Wis. Stat. ch. 283.

Count 1 - Dredging The River Without A Permit

17. Wisconsin Stat. § 30.20(1)(b) states that "[N]o person may remove any material from the bed of any lake or stream not mentioned under par. (a) without first obtaining a permit from the [D]epartment [of Natural Resources]"

18. The defendants' failure to obtain a permit from the DNR prior to dredging the Root River as part of the project is a violation of Wis. Stat. § 30.20(1)(b).

19. The City of Milwaukee is a party to this violation pursuant to Wis. Stat. §§ 30.292 and 30.99.

20. Wisconsin Stat. § 30.298(1) provides for forfeitures of not less than \$100 and not more than \$10,000 for each violation of Wis. Stat. § 30.20.

21. Wisconsin Stat. § 30.298(5) provides for injunctive relief related to violations of Wis. Stat. § 30.20, including "restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant."

Count 2 - Placing Material And Structures In The River Without A Permit

22. Wisconsin Stat. § 30.12(1) provides that “[U]nless a permit has been granted by the [D]epartment [of Natural Resources] pursuant to statute or the legislature has otherwise authorized structures or deposits in navigable waters, it is unlawful . . . [t]o deposit any material or to place any structure upon the bed of any navigable water where no bulkhead line has been established.”

23. The defendants’ failure to obtain a permit from the DNR prior to placing material and structures in the Root River as part of the project is a violation of Wis. Stat. § 30.12(1).

24. The City of Milwaukee is a party to this violation pursuant to Wis. Stat. §§ 30.292 and 30.99.

25. Wisconsin Stat. § 30.15(1) provides for forfeitures of not less than \$100 and not more than \$500 for each violation of Wis. Stat. § 30.12. Each day of violation is a separate offense.

26. Wisconsin Stat. § 30.298(5) provides for injunctive relief related to violations of Wis. Stat. § 30.12, including “restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.”

Count 3 - Violation Of The Pit/Trench Dewatering Permit

27. Wisconsin Stat. § 283.91(2) states that “[a]ny person who violates . . . any term or condition of a permit issued under this chapter . . . shall forfeit not less than \$10 nor more than \$10,000 for each day of violation”

28. The State has issued Wisconsin Pollutant Discharge Elimination System (“WPDES”) general permit number WI-0049344-1 pursuant to Wis. Stat. § 283.35. This statewide permit governs the discharge from pit and trench dewatering activities to the waters of the state, and was in effect during all times relevant to this complaint.

29. Section D of WPDES general permit number WI-0049344-1 sets a daily maximum limit of 40 mg/l of total suspended solids for any discharge to surface waters covered by the permit.

30. On March 6, 2000, DNR personnel took water samples from the dewatering activities at the pipe trench location of the project. Laboratory analysis of these samples indicate that the dewatering discharge was entering the Root River with a daily maximum concentration of up to 10,800 mg/l of total suspended solids.

31. The defendants’ violation of the permit’s total suspended solids limit is a violation of Wis. Stat. § 283.91(2).

WHEREFORE, plaintiff requests judgment:

1. Ordering the defendants to remediate any and all environmental damage resulting from the violations alleged in this complaint.

2. For forfeitures from the defendants as provided for in Wis. Stat. §§ 30.15(1), 30.298(1), and 283.91(2).

3. For the 23% penalty assessment pursuant to Wis. Stat. § 757.05(1).

4. For the 10% environmental assessment pursuant to Wis. Stat. § 299.93(1).

5. For the 1% jail assessment pursuant to Wis. Stat. § 302.46(1).

6. For \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$5.00 crime lab and drug assessment pursuant to Wis. Stat. § 165.755(1), the \$40.00 court support services fee pursuant to Wis. Stat. § 814.634(1), and the \$11.00 justice information and special prosecution clerks fees pursuant to Wis. Stat. §§ 814.635(1) and (1m).

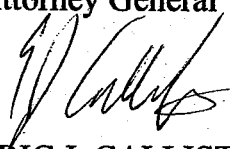
7. For the costs and disbursements of this action, including attorney fees under Wis. Stat. § 283.91(5).

8. For such other relief as the court may deem appropriate.

Dated this 11th day of September, 2002.

Respectfully Submitted,

JAMES E. DOYLE
Attorney General



ERIC J. CALLISTO
Assistant Attorney General
State Bar No. 1023016

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 261-8127

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No.

Unclassified - Civil: 30703

CITY OF MILWAUKEE
200 East Wells Street
Room 205
Milwaukee, WI 53202

and

ADVANCED SEWER &
WATER, INC.
2479 S. Green Links Drive
P.O. Box 27097
West Allis, WI 53227,

Defendants.

STIPULATION AND ORDER FOR JUDGMENT

The State of Wisconsin, at the request of the Wisconsin Department of Natural Resources ("DNR") brought this action against the defendants City of Milwaukee and Advanced Sewer & Water, Inc. ("ASW") seeking forfeitures and injunctive relief for the defendants' violation of state laws prohibiting the unpermitted dredging and placement of materials in waters of the State as well as the violation of statewide limits on the amount of total suspended solids permissible in pit and trench dewatering activities. The parties

now wish to settle this matter by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS HEREBY STIPULATED AND AGREED between the parties, the State by its attorneys James E. Doyle, Attorney General, and Eric J. Callisto, Assistant Attorney General, the City of Milwaukee by its attorney, Grant F. Langley, and ASW by its attorney T. Michael Schober, that this case be settled on the following terms and conditions:

1. The defendants waive formal service of process and acknowledge receipt of a copy of the Complaint filed in this action.
2. Judgment on the Complaint shall be entered in favor of the plaintiff, and against the defendants.
3. Defendant City of Milwaukee shall pay a total of \$12,500.00 to settle this action. This sum includes a forfeiture of \$9,267.91 and the following costs, fees, and assessments: a jail assessment of \$92.68 pursuant to Wis. Stat. § 814.63(3)(ag); a 23% penalty assessment of \$2,131.62 pursuant to Wis. Stat. § 814.63(3)(a); a 10% environmental assessment of \$926.79 pursuant to Wis. Stat. § 814.63(3)(bs); \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1)(b); a crime laboratory and drug law enforcement assessment of \$5.00 pursuant to Wis. Stat. § 814.63(3)(am); the \$40.00 court support services fee pursuant to Wis. Stat. § 814.634(1); and the \$11.00 justice information and special prosecution clerks fees pursuant to Wis. Stat. §§ 814.635(1) and (1m).

4. Defendant ASW shall pay a total of \$10,000.00 to settle this action. This sum includes a forfeiture of \$7,402.24 and the following costs, fees, and assessments: a jail assessment of \$74.02 pursuant to Wis. Stat. § 814.63(3)(ag); a 23% penalty assessment of \$1,702.51 pursuant to Wis. Stat. § 814.63(3)(a); a 10% environmental assessment of \$740.23 pursuant to Wis. Stat. § 814.63(3)(bs); \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1)(b); a crime laboratory and drug law enforcement assessment of \$5.00 pursuant to Wis. Stat. § 814.63(3)(am); the \$40.00 court support services fee pursuant to Wis. Stat. § 814.634(1); and the \$11.00 justice information and special prosecution clerks fees pursuant to Wis. Stat. §§ 814.635(1) and (1m).

5. Each defendant shall pay the sum it owes by a check made payable to "Milwaukee County Clerk of Courts," which shall be postmarked or delivered by November 15, 2002, to Milwaukee County Clerk of Courts, Courthouse, 901 N. Ninth Street, Milwaukee, Wisconsin, 53223. A copy of both the accompanying cover letter and the check shall be sent to Eric J. Callisto, Assistant Attorney General, Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin, 53707-7857.

6. Except as between the parties hereto, nothing contained in this Stipulation and Order for Judgment or the fact that judgment was entered shall be construed as an admission of liability or a finding of fault by the City of Milwaukee or ASW in any proceeding now pending or hereafter commenced.


7. This Stipulation and Order for Judgment as approved by the Court shall apply to, and be binding on, the parties hereto and on their officers, officials, employees, agents, and assigns.

8. Entry of a satisfaction of the judgment based on the Stipulation and Order for Judgment shall fully release the defendants and their officers, officials, employees and agents, of all liability for all violations described in the Complaint occurring up through and including the date of this Stipulation.

9. The terms of the Stipulation and Order for Judgment shall be enforceable under Wis. Stat. ch. 785. The City of Milwaukee's or ASW's economic hardship or claimed financial difficulties shall not be a defense to any action taken pursuant to Wis. Stat. ch. 785 nor shall such economic hardship or claimed financial difficulties be advanced by the City of Milwaukee or ASW as an excuse or defense, legal or otherwise, for failure to comply with the terms of this Stipulation and Order for Judgment.

10. The accompanying Judgment may be entered incorporating the terms of this Stipulation without notice or further proceedings.

9/11/02
Date


Eric J. Callisto
Assistant Attorney General
State Bar No. 1023016
Attorney for Plaintiff
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707-7857
(608) 261-8127

Date

Grant F. Langley
State Bar No. 1013700
City Attorney
Attorney for Defendant City of
Milwaukee
200 East Wells Street
Milwaukee, Wisconsin 53202-3551
(414) 286-2601

Date

T. Michael Schober
State Bar No. 1013310
Attorney for Defendant Advanced Sewer
& Water, Inc.
Schober Schober & Mitchell, S.C.
16845 W. Cleveland Avenue
P.O. Box 510233
New Berlin, Wisconsin 53151-0233
(262) 785-1820

ORDER FOR JUDGMENT

The foregoing stipulation is hereby approved and adopted by the Court as the judgment of this Court, and the clerk shall enter judgment accordingly. IT IS SO ORDERED.

Dated this _____ day of _____, 2002.

BY THE COURT:

Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857,

Plaintiff,

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and

ADVANCED SEWER &
WATER, INC.
2479 S. Green Links Drive
P.O. Box 27097
West Allis, WI 53227,

Defendants.

JUDGMENT

1. The plaintiff is a sovereign state of the United States with offices at the State Capitol in Madison, Wisconsin.
2. The defendant City of Milwaukee is a municipality in the County of Milwaukee, with offices at 200 East Wells Street, Milwaukee, Wisconsin.
3. The defendant Advanced Sewer & Water, Inc. is a domestic corporation with offices at 2479 S. Green Links Drive, West Allis, Wisconsin.

4. Judgment is granted against the defendant City of Milwaukee and to the plaintiff for a total amount of \$12,500.00, which shall be paid to the Clerk of Courts for Milwaukee County.

5. Judgment is granted against the defendant Advanced Sewer & Water, Inc. and to the plaintiff for a total amount of \$10,000.00, which shall be paid to the Clerk of Courts for Milwaukee County.

6. The Stipulation and Order for Judgment of the parties is incorporated herein in its entirety.

Dated this _____ day of _____, 2002.

BY THE COURT:

Milwaukee County Clerk of Courts

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
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SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.


Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The

answer must be sent or delivered to the court, whose address is Milwaukee County Courthouse, Room 104, 901 North Ninth Street, Milwaukee, Wisconsin 53233, and to Eric J. Callisto, Assistant Attorney General, plaintiff's attorney, whose address is Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 11th day of September, 2002.

JAMES E. DOYLE
Attorney General



ERIC J. CALLISTO
Assistant Attorney General
State Bar #1023016

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
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STATE OF WISCONSIN

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CIVIL COMPLAINT

The State of Wisconsin by its counsel, Attorney General James E. Doyle and Assistant Attorney General Eric J. Callisto, brings this complaint seeking forfeitures and injunctive relief against the defendant City of Milwaukee, at the request of the Wisconsin Department of Natural Resources ("DNR") pursuant to Wis. Stat. §§ 283.89 and 283.91, and alleges as follows:

1. Plaintiff is a sovereign state of the United States of America with its seat of government and offices at the State Capitol in Madison, Dane County, Wisconsin.

2. Defendant City of Milwaukee is a municipality in the County of Milwaukee.

Background Facts

3. On or about October 21, 1994, and pursuant to Wis. Stat. § 283.33, the DNR issued to the City of Milwaukee Wisconsin Pollutant Discharge Elimination System ("WPDES") Permit Number WI-S049018-1 ("1994 Permit"). The 1994 Permit remained in effect from the date of issuance through July 31, 2000, and regulated the discharges from the city's municipal separate storm sewer system to a variety of waterways and water bodies in the Milwaukee area.

4. On or about August 1, 2000, and pursuant to Wis. Stat. § 283.33, the DNR issued to the City of Milwaukee WPDES Permit Number WI-S049018-2 ("2000 Permit"), a successor permit to the 1994 Permit. The 2000 Permit became effective on the date of issuance and remains in effect. It covers discharges from the city's municipal separate storm sewer system to a variety of waterways and water bodies in the Milwaukee area.

5. Wisconsin Stat. § 283.31(1) states that "[t]he discharge of any pollutant into any waters of the state . . . by any person is unlawful unless such discharge . . . is done under a permit issued by the department under this section or s. 283.33."

6. Wisconsin Stat. § 283.91(2) states that "any person who violates this chapter [or] . . . any term or condition of a permit issued under this chapter . . . shall forfeit not less than \$10 nor more than \$10,000 for each day of violation . . ."

7. Pursuant to Wis. Stat. § 283.01(11), the City of Milwaukee is defined as a "person" for purposes of Wis. Stat. ch. 283 applicability.

8. Wisconsin Stat. §§ 283.89(1) and 283.91(1) authorize the Department of Justice, upon referral from DNR, to enforce Wis. Stat. ch. 283.

Count One - Illegal Discharge of Sewer Cleanout at Tracer Yard

9. Beginning no later than June of 1998 the City of Milwaukee began discharging cleanout from storm sewers and sanitary sewer clogs to the ground at Tracer Yard, property owned by the City of Milwaukee at 6th and Canal Streets in the City of Milwaukee. The purpose of discharging the cleanout at Tracer Yard was to facilitate dewatering prior to disposal to a landfill. A storm sewer outlet was directly underneath the discharge location. Drainage from the cleanout flowed through the storm sewer outlet and directly to the Menomonee River.

10. The cleanout drainage at Tracer Yard contained a variety of pollutants, including, but not limited to, elevated amounts of lead, zinc, suspended solids, and fecal coliform.

11. The City of Milwaukee's discharge of the cleanout at Tracer Yard violated Wis. Stat. § 283.31(1).

Count Two - Violation of the 1994 Permit at Tracer Yard

12. The 1994 Permit requires that "[s]olids, sludges, filter backwash or other pollutants removed from or resulting from treatment or control of storm water shall be

stored and disposed of in a manner to prevent any pollutant from the materials from entering the waters of the state.” 1994 Permit, Part II(9).

13. The City of Milwaukee’s discharge of the cleanout at Tracer Yard described in paragraphs 9 and 10 violated Part II(9) of the 1994 Permit.

Count Three - Illegal Discharge of Sewer Cleanout at Good Hope Road Bridge

14. By no later than November 29, 2000, the City of Milwaukee began to clean out two separate storm sewers that run along Good Hope Road and that discharge directly to Lincoln Creek just south of the Good Hope Road Bridge and west of 51st Street, in the City of Milwaukee. This work included the removal of bulkheads on both storm sewers. By no later than December 1, 2000, the removal of the bulkheads, in tandem with the cleaning process, recent precipitation, and the failure of the City to follow reasonable best management practices, resulted in the discharge of large quantities of heavy metals, polycyclic aromatic hydrocarbons, and solids - including sand and silt - into Lincoln Creek.

15. The City of Milwaukee’s discharge of the cleanout at the Good Hope Road Bridge site violated Wis. Stat. § 283.31(1).

Count Four - Violation of the 2000 Permit at Good Hope Road Bridge

16. The 2000 Permit requires that “[s]olids, sludges, filter backwash or other pollutants removed from or resulting from treatment, control, or maintenance of storm

water shall be stored and disposed of in a manner to prevent any pollutant from the materials from entering the waters of the state” 2000 Permit, Part II(9).

17. The City of Milwaukee’s discharge of the cleanout at the Good Hope Road Bridge site described in paragraph 14 violated Part II(9) of the 2000 Permit.

Count Five - Violation of the Construction Erosion Control Elements of the 1994 Permit

18. The 1994 Permit requires that the City of Milwaukee “shall ensure source area controls and structural best management practices are operated and maintained to reduce pollutants in runoff from constructions [sic] sites.” 1994 Permit, Part I.C(9).

19. The 1994 Permit further requires that the construction site erosion controls contained in Chapter 290 of the City of Milwaukee ordinance (hereinafter “the erosion control ordinance”) “shall continue to be implemented” by the City of Milwaukee. 1994 Permit, Part I.C(12)(h).

20. Beginning no later than October 12, 1998, and continuing until the expiration of the 1994 Permit on July 31, 2000, the City of Milwaukee violated the 1994 Permit by failing to ensure that source area controls and structural best management practices were operated and maintained to reduce pollutants in runoff from construction sites and by failing to implement construction site erosion controls contained in the erosion control ordinance. This violation is evidenced by the following nonexhaustive list of events:

a. Beginning no later than October 12, 1998, and running through October 19, 1999, the City of Milwaukee failed to adequately inspect and enforce the

erosion control ordinance at the 100-acre Town Corporate Park of Granville construction site, located at 107th Street and Brown Deer Road, in the City of Milwaukee. As a result of this failure source area controls and structural best management practices were repeatedly not installed and/or maintained, including failure to maintain silt fences, inadequate placement of tracking pads, inadequate storm sewer inlet protection, inadequate or untimely installation of sediment traps and basins, and failure to stabilize inactive areas of the site. As a result, large quantities of sediment discharged into Dretzka Park Creek, a tributary of the Menomonee River.

b. On or about December 7, 1999, and assisted by a contractor, the City of Milwaukee began a watermain relocation project in the Root River at a location adjacent to the Layton Avenue Bridge and 99th Street, in the County of Milwaukee. By failing to properly conduct, oversee, and inspect this construction project, the City of Milwaukee allowed damaging runoff to enter the Root River and a nearby wetland.

c. Beginning no later than November 1, 1999, the City of Milwaukee failed to adequately inspect and enforce the erosion control ordinance at the Green Tree Properties construction site, located at 6767 N. 60th Street, in the City of Milwaukee. As a result of this failure source area controls and structural best management practices were repeatedly not installed and/or maintained, including failure to maintain silt fences, untimely installation of sediment basins, failure to provide drainage swale stabilization, and failure to stabilize inactive areas of the site. As a result, large quantities of sediment discharged into storm sewers and Lincoln Creek, a tributary of the Milwaukee River.

d. Beginning no later than July 11, 2000, the City of Milwaukee failed to adequately inspect and enforce the erosion control ordinance at a construction site at Bradley Road and Edgeworth Drive. As a result of this failure, trench flushing activity and inadequate site erosion controls resulted in a significant discharge of sediment to South Branch Creek, a tributary of the Milwaukee River.

e. Beginning no later than July 11, 2000, the City of Milwaukee failed to adequately inspect and enforce the erosion control ordinance at a construction site at North Avenue and 33rd Street. As a result of this failure, inadequate tracking pads allowed large amounts of soil to be deposited offsite.

Count Six - Violation of the Construction Erosion Control Elements of the 2000 Permit

21. The 2000 Permit requires that the City of Milwaukee “shall limit to the maximum extent practicable the discharge of pollutants from it’s [sic] municipal separate storm sewer system.” 2000 Permit, Part I.E.(1).

22. The 2000 Permit further requires that the City of Milwaukee “shall reduce pollutants in stormwater runoff from construction sites through the implementation and maintenance of source area controls and structural best management practices.” 2000 Permit, Part I.E.(8). Compliance may be achieved by “[i]mproved implementation and enforcement of the Construction Site Erosion Control Ordinance contained in Chapter 290 of the City of Milwaukee ordinance code.” *Id.*

23. Beginning no later than August 1, 2000, and continuing to date, the City of Milwaukee violated the 2000 Permit by failing to limit to the maximum extent

practicable the discharge of pollutants from its municipal separate storm sewer system and by failing to reduce pollutants in storm water runoff from construction sites through the implementation and maintenance of source area controls and structural best management practices. This violation is evidenced by the following nonexhaustive list of events:

a. Beginning no later than March 21, 2001, the City of Milwaukee failed to adequately inspect and enforce the erosion control ordinance at a construction site at the NW ¼ of the SE ¼, Section 18, T8N, R21E, in the City of Milwaukee. As a result of this failure, a variety of best management practices were not followed at the site, including timely installation of sediment basins, storm sewer inlet protection, and maintenance of silt fences.

b. Beginning no later than July 31, 2001, the City of Milwaukee failed to adequately inspect and enforce the erosion control ordinance at a watermain repair at 66th Street and Lancaster Avenue in the City of Milwaukee. As a result of this failure, the site lacked adequate silt fencing, contained large parcels of unstabilized soil, and failed to have storm sewer inlet protection.

c. Beginning no later than August 2, 2001, the City of Milwaukee failed to adequately inspect and enforce the erosion control ordinance at the Parklawn Apartments construction site at Sherman Boulevard and Congress Street in the City of Milwaukee. As a result of this failure, the site lacked adequate storm sewer inlet protection and runoff from the site was entering the storm sewer and discharging into Lincoln Creek, approximately two blocks away.

24. On various dates, and pursuant to Wis. Stat. § 893.80(1), the DNR sent to the City of Milwaukee Notices of Claim concerning the city's violations alleged in this complaint, or otherwise complied with the requirements of that statute.

WHEREFORE, plaintiff requests judgment:

1. Ordering the defendant to remediate any and all environmental damage resulting from the violations alleged in this complaint.
2. For forfeitures from the defendant as provided for in Wis. Stat. § 283.91(2).
3. For the 23% penalty assessment pursuant to Wis. Stat. § 757.05(1).
4. For the 10% environmental assessment pursuant to Wis. Stat. § 299.93(1).
5. For the 1% jail assessment pursuant to Wis. Stat. § 302.46(1).
6. For \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$5.00 crime lab and drug assessment pursuant to Wis. Stat. § 165.755(1), the \$40.00 court support services fee pursuant to Wis. Stat. § 814.634(1), and the \$11.00 justice information and special prosecution clerks fees pursuant to Wis. Stat. §§ 814.635(1) and (1m).


7. For the costs and disbursements of this action, including attorney fees under Wis. Stat. § 283.91(5).

8. For such other relief as the court may deem appropriate.

Dated this 11th day of September, 2002.

Respectfully Submitted,

JAMES E. DOYLE
Attorney General


ERIC J. CALLISTO
Assistant Attorney General
State Bar No. 1023016

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 261-8127

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No.

Unclassified - Civil: 30703

CITY OF MILWAUKEE
200 East Wells Street
Room 205
Milwaukee, WI 53202

Defendant.

STIPULATION AND ORDER FOR JUDGMENT

The State of Wisconsin, at the request of the Wisconsin Department of Natural Resources ("DNR") brought this action against the defendant City of Milwaukee seeking forfeitures and injunctive relief for the defendant's violation of certain provisions of the defendant's Wisconsin Pollutant Discharge Elimination System ("WPDES") permits as well as for violations of Wisconsin statutes prohibiting the unpermitted discharge of pollutants into the waters of the State. The parties now wish to settle this matter by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS HEREBY STIPULATED AND AGREED between the parties, the State by its attorneys James E. Doyle, Attorney General, and Eric J. Callisto, Assistant Attorney

General, and the City of Milwaukee by its attorney, Grant F. Langley, that this case be settled on the following terms and conditions:

1. The defendant City of Milwaukee waives formal service of process and acknowledges receipt of a copy of the Complaint filed in this action.

2. Judgment on the Complaint shall be entered in favor of the plaintiff, and defendant shall pay a total of \$87,500.00 to settle this action. This sum includes a forfeiture of \$65,238.06 and the following costs, fees, and assessments: a jail assessment of \$652.38 pursuant to Wis. Stat. § 814.63(3)(ag); a 23% penalty assessment of \$15,004.75 pursuant to Wis. Stat. § 814.63(3)(a); a 10% environmental assessment of \$6,523.81 pursuant to Wis. Stat. § 814.63(3)(bs); \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1)(b); a crime laboratory and drug law enforcement assessment of \$5.00 pursuant to Wis. Stat. § 814.63(3)(am); the \$40.00 court support services fee pursuant to Wis. Stat. § 814.634(1); and the \$11.00 justice information and special prosecution clerks fees pursuant to Wis. Stat. §§ 814.635(1) and (1m).

3. The entire sum of \$87,500.00 owed shall be paid by a single check made payable to "Milwaukee County Clerk of Courts" and shall be postmarked or delivered by November 15, 2002, to Milwaukee County Clerk of Courts, Courthouse, 901 N. Ninth Street, Milwaukee, Wisconsin, 53223. A copy of both the accompanying cover letter and the check shall be sent to Eric J. Callisto, Assistant Attorney General, Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin, 53707-7857.

4. By no later than October 31, 2002, the City of Milwaukee must forward to James Ritchie of the DNR (or his successor) the scope of work, request for proposals, or

other similar document ("proposal") that the City of Milwaukee intends to utilize to secure an individual or entity ("consultant") to conduct a comprehensive evaluation ("evaluation") of the City of Milwaukee's stormwater and construction site runoff control programs, including the City of Milwaukee's compliance with WPDES Permit Number WI-S049018-2. DNR has the right to reasonably modify any element(s) of the proposal to ensure that the evaluation will adequately review the relevant programs. Within 90 days of DNR's approval or reasonable modification of the proposal, the City of Milwaukee must forward to DNR the name of the consultant the City of Milwaukee intends to utilize to conduct the evaluation. At the time of submission, the consultant must otherwise not be an employee of the City of Milwaukee. DNR has the right to approve the consultant recommended by the City of Milwaukee, which shall not be unreasonably withheld. DNR shall approve or deny the recommended consultant within 21 days of notification of the identity of the recommended consultant. The City of Milwaukee shall have 45 days from the date it learns of DNR's denial (or subsequent denials) to submit a different consultant for review.

5. By no later than 30 days after DNR approves the City of Milwaukee's consultant, and no later than every 30 days thereafter until the consultant has completed the terms of its contract, the City of Milwaukee shall hold a meeting - to include the consultant and a representative(s) of DNR - to review and/or critique the progress of the consultant. By no later than 180 days after DNR approves of the City of Milwaukee's consultant, the City of Milwaukee shall submit to DNR a report by the consultant describing, with specificity, the consultant's recommendations for improving the City of

Milwaukee's stormwater and construction site runoff control programs and its compliance with WPDES Permit Number WI-S049018-2. Within 60 days of DNR's receipt of the report DNR shall notify the City of Milwaukee of those recommendations in the report the City of Milwaukee is to implement, if any. The recommendation or recommendations selected by the DNR shall be reasonable in terms of costs, efficiency, and necessity. Implementation must be pursuant to a reasonable deadline imposed by DNR, and DNR has the sole authority, otherwise consistent with the terms of this Stipulation, to decide which recommendations, if any, the City of Milwaukee shall implement. Implementation of the recommendations shall be done to DNR's reasonable satisfaction, which shall be communicated to the City of Milwaukee via written correspondence.

6. Except as between the parties hereto, nothing contained in this Stipulation and Order for Judgment or the fact that judgment was entered shall be construed as an admission of liability or a finding of fault by the City of Milwaukee in any proceeding now pending or hereafter commenced.

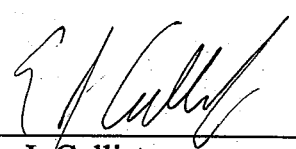
7. This Stipulation and Order for Judgment as approved by the Court shall apply to, and be binding on, the parties hereto and on their officers, officials, employees, agents, and assigns.

8. Entry of a satisfaction of the judgment based on the Stipulation and Order for Judgment shall fully release the City of Milwaukee and its officers, officials, employees and agents, of all liability for all violations described in the Complaint occurring up through and including the date of this Stipulation.

9. The terms of the Stipulation and Order for Judgment shall be enforceable under Wis. Stat. ch. 785. The City of Milwaukee's economic hardship or claimed financial difficulties shall not be a defense to any action taken pursuant to Wis. Stat. ch. 785 nor shall such economic hardship or claimed financial difficulties be advanced by the City of Milwaukee as an excuse or defense, legal or otherwise, for failure to comply with the terms of this Stipulation and Order for Judgment.

10. The accompanying Judgment may be entered incorporating the terms of this Stipulation without notice or further proceedings.

9/11/02
Date


Eric J. Callisto
Assistant Attorney General
State Bar No. 1023016
Attorney for Plaintiff
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707-7857
(608) 261-8127

Date

Grant F. Langley
State Bar No. 1013700
City Attorney
Attorney for Defendant
City of Milwaukee
200 East Wells Street
Milwaukee, Wisconsin 53202-3551
(414) 286-2601

ORDER FOR JUDGMENT

The foregoing stipulation is hereby approved and adopted by the Court as the judgment of this Court, and the clerk shall enter judgment accordingly. IT IS SO ORDERED.

Dated this _____ day of _____, 2002.

BY THE COURT:

Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No.

Unclassified - Civil: 30703

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200 East Wells Street
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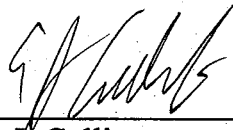
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9/11/02

Date



Eric J. Callisto
Assistant Attorney General
State Bar No. 1023016
Attorney for Plaintiff
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707-7857
(608) 261-8127

Date

Grant F. Langley
State Bar No. 1013700
City Attorney
Attorney for Defendant
City of Milwaukee
200 East Wells Street
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(414) 286-2601

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BY THE COURT:

Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

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17 West Main Street
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Plaintiff,

v.

Case No.

Unclassified - Civil: 30703

CITY OF MILWAUKEE
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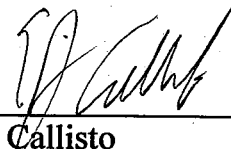
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10. The accompanying Judgment may be entered incorporating the terms of this Stipulation without notice or further proceedings.

9/11/02
Date


Eric J. Callisto
Assistant Attorney General
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Date

Grant F. Langley
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City of Milwaukee
200 East Wells Street
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ORDER FOR JUDGMENT

The foregoing stipulation is hereby approved and adopted by the Court as the judgment of this Court, and the clerk shall enter judgment accordingly. IT IS SO ORDERED.

Dated this _____ day of _____, 2002.

BY THE COURT:

Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
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Plaintiff,

v.

Case No.

Unclassified - Civil: 30703

CITY OF MILWAUKEE
200 East Wells Street
Room 205
Milwaukee, WI 53202.

Defendant.

JUDGMENT

1. The plaintiff is a sovereign state of the United States with offices at the State Capitol in Madison, Wisconsin.
2. The defendant is a municipality in the County of Milwaukee, with offices at 200 East Wells Street, Milwaukee, Wisconsin.
3. Judgment is granted against the defendant and to the plaintiff for a total amount of \$87,500.00, which shall be paid to the Clerk of Courts for Milwaukee County.
4. The Stipulation and Order for Judgment of the parties is incorporated herein in its entirety.

5. The Court shall have continuing jurisdiction over this action to enforce compliance with this Judgment, including the terms in the incorporated Stipulation and Order for Judgment. The terms of this Judgment and the Stipulation and Order for Judgment shall be enforceable under Wis. Stat. ch. 785.

Dated this _____ day of _____, 2002.

BY THE COURT:

Milwaukee County Clerk of Courts