

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2018-0220
Coffeyville Resources Refining &)	
Marketing, LLC)	
Coffeyville, Kansas)	
Respondent)	COMPLAINT AND
)	CONSENT AGREEMENT/
)	FINAL ORDER
Proceedings under Section 309(g))	
of the Clean Water Act,)	
33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency, Region 7 (“EPA”) and Coffeyville Resources Refining & Marketing, LLC (“Respondent” or “CRRM”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated these authorities to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (“Complainant”).

5. Respondent is a Delaware corporation authorized to conduct business under the laws of Kansas. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated thereunder, as expressed in the specific terms and conditions prescribed in the applicable permit.

8. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

9. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to commence an action for civil administrative penalties against any person the EPA finds has violated, *inter alia*, Section 301 of the CWA, 33 U.S.C. § 1311, or a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

Wastewater and Stormwater

10. As require by the CWA, the EPA promulgated regulations to implement the NPDES program under Section 402 of the CWA, including 40 CFR Parts 122 and 419.

11. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

12. Regulations promulgated pursuant to Section 402(p) of the CWA at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

13. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, as discharges from facilities classified within Standard Industrial Classification (“SIC”) 29, which includes SIC 2911, Petroleum Refining.

14. Regulations at 40 CFR Part 419, Subpart B, establish the Petroleum Refinery Point Source Category, Cracking Subcategory, NPDES effluent limitation guidelines applicable to all discharges from any facility that produces petroleum products by the use of topping and cracking.

General Allegations

15. Respondent is and was at all times relevant to this action the owner and/or operator of a petroleum refinery facility (“Facility”), located at 400 North Linden Street, Coffeyville, Kansas 67337.

16. Respondent’s Facility is primarily engaged in Petroleum Refining activities classified under SIC 2911.

17. Industrial wastewater and storm water are discharged from Respondent’s Facility through several outfalls to the Verdigris River or to a ditch that discharges to the Verdigris River.

18. The Verdigris River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

19. Discharges of industrial wastewater from Respondent’s Facility are subject to the Petroleum Refinery Point Source Category, Cracking Subcategory, effluent guidelines at 40 CFR Part 419, Subpart B.

20. Storm water runoff, snow melt runoff, and surface runoff and drainage from Respondent’s Facility are “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

21. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

22. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(ii).

23. Each outfall at Respondent’s Facility is a “point source” that “discharges pollutants” as defined by Section 502 of the CWA, 33 U.S.C. § 1362, and 40 CFR § 122.2.

24. Respondent’s discharges of pollutants from the Facility require a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

25. Upon receipt of a timely application for an NPDES permit, KDHE issued NPDES Permit No. KS0000248 (“Permit”) to the Facility, effective from December 1, 2012 through

November 30, 2017. The Permit authorizes discharges of industrial wastewater and stormwater associated with industrial activity, subject to conditions and limitations set forth in the Permit.

26. Upon receipt of timely application for renewal of the Permit on June 6, 2017, KDHE administratively extended coverage under the Permit to Respondent until such time as a new NPDES permit is issued.

27. Respondent has operated under NPDES Permit No. KS0000248 at all times relevant to this action.

28. On or about April 3 through 7, 2017, the EPA National Enforcement Investigations Center (“NEIC”) performed a Multimedia Compliance Investigation (“Investigation”) of Respondent’s Facility. The Investigation was performed, in part, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its Permit and the CWA.

29. During the Investigation, the EPA inspectors reviewed Respondent’s records relating to the Permit and observed the Facility and the locations from which wastewater and industrial stormwater are discharged. Respondent also provided copies of requested records to the EPA inspectors during the Investigation and in correspondence following the Investigation.

30. By letter dated, January 16, 2018, the EPA provided Respondent a copy of the Investigation report.

Specific Allegations of Violation

COUNT I

Violations of Limitations and Conditions for Outfall 02EA1

31. The allegations stated above are re-alleged and incorporated herein by reference.

32. Section A, Effluent Limitations and Monitoring Requirements, of Respondent’s Permit identifies Outfall 02EA1, which is an emergency discharge from the Stormwater Surge Ponds to the Verdigris River. Discharges from Outfall 02EA1 are not allowed unless flow through Outfall 001A1, the Facility’s discharge from the final clarifier and/or oxidation ponds to the Verdigris River, exceeds the permitted design capacity of 2.2 million gallons per day (“MGD”) and other conditions are documented and submitted to KDHE that prevent the entire 2.2 MGD from being treated. Discharges from Outfall 02EA1 are also subject to Paragraphs 9 and 10 of the Standard Conditions and effluent concentration limitations identified in the Permit.

33. Section B of the Permit requires compliance with the Standard Conditions attached to the Permit. Paragraphs 6, 7, 9 and 10 of the Standard Conditions provide, in pertinent part:

- a. Paragraph 6, Facility Operations, requires the permittee, at all times, to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve

compliance with the requirements of this permit and Kansas and Federal law. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the requirements of this permit. The permittee shall take all necessary steps to minimize or prevent any adverse impact to human health or the environment resulting from noncompliance with any effluent limits specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. When necessary to maintain compliance with the permit requirements, the permittee shall halt or reduce those activities under its control which generate wastewater routed to this facility.

- b. Paragraph 7, Incidents, defines "In-Plant Diversion" as routing the wastewater around any treatment unit in the treatment facility through which it would normally flow.
- c. Paragraph 9, Prohibition of an In-Plant Diversion, prohibits any in-plant diversion from facilities necessary to maintain compliance with the Permit, "except: (a) where the in-plant diversion was unavoidable to prevent loss of life, personal injury, or severe property damage; (b) where there were no feasible alternatives to the in-plant diversion, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; and (c) the permittee submitted a notice as required in the Incident Reporting paragraph below. The Director [of KDHE] may approve an anticipated in-plant diversion, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above."
- d. Paragraph 10, Incident Reports, requires the permittee to report any unanticipated collection system diversion, in-plant diversion, in-plant flow through occurrence, spill, upset or any violation of a permitted daily maximum limit within 24 hours from the time the permittee became aware of the incident. The permittee must also provide a written submission within 5 days of the time the permittee became aware of the incident that contains a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

34. Section C, Schedule of Compliance, Paragraph 3, of Respondent's Permit required Respondent to conduct a stormwater bypass study and submit a report by December 1, 2014 (within two years of the effective date of the Permit) to evaluate flow capacities, estimated flow rates and measurements, and wastewater treatment facility operational flows, bypass flows and capacities. The study was required to make recommendations to minimize or eliminate the magnitude, frequency and duration of bypasses to all or portions of the wastewater treatment system.

35. On or about December 1, 2014, Respondent submitted the stormwater bypass study to KDHE as required by the Permit. The study documented the treatment and storage capacity of the Facility. The study also modeled the point at which storm-related discharges from Outfall 02EA1 would occur, assuming the following underlying conditions: (1) a single 24-hour precipitation event occurs; (2) that commences when Tank 14A2 and the Stormwater Surge Ponds are operating at maximum available storage capacity. Premised on these assumptions, the study made the following observations:

- a. Equalization Tank 14A2 has a design storage capacity of 6.0 million gallons (“MG”), and the Stormwater Surge Pond has an estimated detention capacity of 9.5 MG. Therefore, if Respondent used its 8” recovery pump to pump accumulated water from the Stormwater Surge Ponds back through the gravity sewer to the wastewater treatment plant between precipitation events, discharges from the Stormwater Surge Ponds through Outfall 02EA1 (referred to as Diversion Four and Outfall 002 in the report) would not occur if precipitation was equal to or less than a 5-year storm event, or 4.5” of precipitation in a 24-hour period.
- b. During a 10-year storm event of 5.7” of precipitation in a 24-hour period, the report projected that the Stormwater Surge Ponds would discharge for approximately 6 hours for a total flow of just over 800,000 gallons. Projections were also provided for 25, 50 and 100-year storm events.
- c. The report recommended that Respondent increase the facility stormwater surge storage. The study suggested that increasing the capacity of the Stormwater Surge Ponds by an additional 4 MG would eliminate discharges up to a 50-year storm event, or 7.5” of precipitation in a 24-hour period.
- d. The report documented that three in-plant diversion structures within the Facility were inoperable due to line blockages and/or failed valves, and therefore could not be used to address precipitation-related flows.

36. Section A of the Permit, Effluent Limitations and Monitoring Requirements, requires that any discharge through Outfall 02EA1, as authorized by the Permit subject to the limitations described in Paragraphs 32 through 35, above, may not exceed the pollutant concentrations listed in the Permit, based on a minimum of daily sampling, including the following:

Outfall 02EA1 - Emergency Discharge from the Stormwater Surge Ponds to Verdigris River Effluent Limitations for Contaminated Runoff 40 CFR 419.22(e)(2) and 40 CFR 419.23(f)(2)			
Effluent Parameters	Units	30 Day Average	Daily Maximum
Total Suspended Solids (“TSS”)	mg/l	21.0	33.0
Oil & Grease	mg/l	8.0	15.0
Phenolic (4AAP)	mg/l	0.17	0.35

37. The NEIC inspectors observed the Facility's wastewater and stormwater collection, storage and treatment systems and collected documentation from Respondent on the layout, capacity and operation of the systems. Observations documented during the NEIC Investigation, review of information provided by the Facility, effluent monitoring data for the Facility, and other relevant information indicate that:

- a. Discharges from Outfall 02EA1 occurred during precipitation events of equal to or less than a 5-year storm event, as calculated in the 2014 stormwater bypass study;
- b. Each of the precipitation-related discharge events from Outfall 02EA1 from September 2014 through October 2018 had a duration longer than, and a magnitude greater than, the expected discharge rates identified in the 2014 stormwater bypass study;
- c. Respondent had not implemented feasible alternatives to the in-plant diversion, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime;
- d. Respondent had not increased the size of the Stormwater Surge Ponds as recommended by the 2014 stormwater bypass study;
- e. Each discharge from Outfall 02EA1 from September 2014 through October 2018 violated one or more effluent limitations; and
- f. Each incident report for discharges from Outfall 02EA1 stated that "[b]ooms were placed to eliminate any possible debris or sheen from entering the Verdigris River." However, discharge from Outfall 02EA1 continued to violate effluent limits and Respondent's incident reports failed to identify any further corrective actions that would be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

38. Based on observations documented during the NEIC Investigation, review of information provided by the Facility, effluent monitoring data for the Facility, and other relevant information, the EPA alleges that the Facility violated the effluent limitations and conditions for discharges from Outfall 02EA1 set forth in its NPDES Permit during at least nine months from September 2014 through October 2018, as set forth in Appendix A of this Order. The violations include, but are not limited to:

- a. Daily maximum limit exceedances for TSS on 21 of the 22 days during which there was a discharge from Outfall 02EA1, and periodic violations of the daily maximum limits for Oil and Grease, and Phenolic;
- b. 30-day average limit exceedances for TSS in each month during which there was a discharge from Outfall 02EA1, and periodic violations of the 30-day average limits for Oil and Grease, and Phenolic;

- c. Failure to operate and maintain all facilities and systems of treatment and control installed or used to achieve compliance with the Permit by maximizing storage for precipitation-related flows and minimizing discharges from the Stormwater Surge Ponds through Outfall 02EA1; and
- d. Failure to implement additional feasible alternatives to achieve compliance with the effluent limits for Outfall 02EA1, such as, but not limited to, increasing stormwater surge storage capacity or installing wastewater treatment controls.

39. Each alleged incident of Respondent’s failure to comply with the limitations and conditions for discharges from Outfall 02EA1, as described above, is a violation of Respondent’s Permit and Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT II
Violations of Limitations and Conditions for Outfalls 001A1 and 001L1

40. The allegations stated above are re-alleged and incorporated herein by reference.

41. Section A of Respondent’s Permit, Effluent Limitations and Monitoring Requirements, authorizes discharge through Outfall 001A1, the discharge from the final clarifier and/or oxidation ponds to the Verdigris River. Discharges from Outfall 001A1 are subject to the pollutant concentrations listed in the Permit, based on a minimum of weekly sampling, including the following:

Outfall 001A1 - Discharge From The Final Clarifier and/or Lagoons To The Verdigris River			
Effluent Parameters	Units	Monthly Average	Daily Maximum
TSS	lbs/day	1176	1845
Phenolic	lbs/day	7.0	19.8

42. Section A of Respondent’s Permit authorizes discharge through Outfall 001L1, which is an internal monitoring location of the discharge from the oxidation ponds to the Verdigris River prior to commingling with any discharge from the final clarifier. Discharges from Outfall 001L1 are subject to the pollutant concentrations listed in the Permit, based on a minimum of weekly sampling, including the following:

Outfall 001L1 - Discharge From the Final Lagoons to Verdigris River			
Effluent Parameters	Units	Monthly Average	Daily Maximum
TSS	mg/l	80	120

43. Section B of the Permit, Standard Conditions, Paragraph 10 requires the permittee to report, among other things, any violation of a permitted daily maximum limit within 24 hours from the time the permittee became aware of the incident. The permittee must also provide a written submission within 5 days of the time the permittee became aware of the incident, that contains a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated

time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

44. Based on observations documented during the NEIC Investigation, review of information provided by the Facility, effluent monitoring data for the Facility, and other relevant information, the EPA finds that the Facility violated the effluent limitations for Outfalls 001A1 and 001L1 set forth in its NPDES Permit for TSS and Phenolic on the following occasions:

- a. Outfall 001A1:
 - i. Phenolic:
 - a) Monthly Ave.: November 2015
 - b) Daily Max.: November 12, 2015
 - ii. TSS:
 - a) Daily Max.: October 13, 2016
- b. Outfall 001L1:
 - i. TSS:
 - a) Daily Max.: June 8, 2017

45. Based on observations documented during the NEIC Investigation and a review of information provided by the Facility, effluent monitoring data for the Facility, and other relevant information, the EPA alleges that Respondent failed to comply with the requirement of Paragraph 10 of the Standard Conditions of the Permit to submit incident reports within 5 days of violations of the daily maximum limits for Outfall 001A1 on the following dates:

- a. November 12, 2015; and
- b. October 13, 2016.

46. Based on observations documented during the NEIC Investigation and a review of information provided by the Facility, effluent monitoring data for the Facility, and other relevant information, the EPA alleges that Respondent failed to comply with the monitoring requirement set forth in its NPDES Permit for Outfall 001A1 in April 2016.

47. Each alleged incident of Respondent's failure to comply with the limitations and conditions for discharges from Outfalls 001A1 and 001L1, as described above, is a violation of Respondent's Permit and Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT III

Failure to Develop and Implement an Adequate Stormwater Pollution Prevention Plan

48. The allegations stated above are re-alleged and incorporated herein by reference.

49. Section C of the Permit, Schedule of Compliance, requires Respondent to submit to KDHE a revised and up-to-date Stormwater Pollution Prevention Plan ("SWPPP") developed and sealed by a Kansas licensed Professional Engineer within one year of the effective date of

the Permit. The SWPPP must include, among other provisions, an evaluation of the frequency and magnitude of WWTP bypasses, the flow capacity of the wastewater treatment and pond system, planned modes of operation based on anticipated flow and rainfall projections, and improvements to the wastewater system that can be implemented to minimize wastewater treatment system bypasses, including separating portions of uncontaminated stormwater runoff and stormwater runoff with minimized or eliminated pollution potential for diversion to the oxidation pond system and/or direct discharge.

50. Section D of the Permit, Supplemental Conditions, Paragraph 17, authorizes the discharge of industrial stormwater from the facility, as defined in 40 C.F.R. § 122.26(b)(14), and requires all such discharges to be in conformance with a facility SWPPP that is developed in accordance with Attachment A of the Permit.

51. Attachment A of Respondent's Permit, Stormwater Pollution Prevention Plan Requirements and Guidelines, requires Respondent to develop and fully implement a SWPPP that is specific to the industrial activities and site characteristics occurring at the location described in the permit. Relevant provisions and requirements of Attachment A include, but are not limited to:

- a. The purpose of the SWPPP is to ensure the design, implementation, management, and maintenance of Best Management Practices ("BMPs") in order to reduce the amount of pollutants in stormwater discharges associated with the industrial activities at the facility; and
- b. The SWPPP must include provisions described in Attachment A, that include, but are not limited to, a description of potential pollutant sources and stormwater management measures and controls appropriate for the facility.

52. Section A of Respondent's Permit, Effluent Limitation and Monitoring Requirements, authorizes infrequent discharge through Outfall 03SA1, which is a stormwater discharge of potentially contaminated runoff from the East Tank Farm firewater pond to the Verdigris River. Any discharge from Outfall 03SA1 is subject to the pollutant limitation and conditions listed in the Permit, including:

- a. The outfall may discharge without further effluent limitations if it does not exceed 15 mg/l oil and grease and 110 mg/l total organic carbon ("TOC") based on an analysis of any single grab or composite sample; and
- b. If the discharge exceeds 15 mg/l oil and grease and 110 mg/l TOC, the discharge shall not exceed the concentrations listed in the Permit, based on a minimum of daily sampling.

53. Attachment A of Respondent's Permit, Stormwater Pollution Prevention Plan Requirements and Guidelines, Paragraph 3, requires the SWPPP to include measures and controls for stormwater management that are appropriate for the facility, including but not limited to:

- a. Good housekeeping, requiring the maintenance of areas in a clean, orderly manner including handling and storage areas (exposed to precipitation) for raw metals, scrap metals, fuels, paints and other process areas;
- b. Identification of all unauthorized non-stormwater (dry weather) discharges directed to surface or groundwater; and
- c. Management of runoff, that describes existing and/or proposed stormwater management practices, other than those which control the generation or source(s) of pollutants, to divert, infiltrate, reuse or otherwise manage stormwater runoff in a manner that reduces pollutants in stormwater discharges from the site.

54. Respondent developed a SWPPP for the Facility, dated November 8, 2013, which was in effect and made available to NEIC during the Investigation.

55. Respondent's SWPPP includes a description of the potential pollutant sources and control measures associated with the East Tank Farm firewater pond. Section 3.2.4. of the SWPPP states that an overflow from the firewater pond at Outfall 03SA1 would enter the Storm Water Collection Ditch drainage basin, which discharges to the Verdigris River. Potential pollutant sources within the drainage area for Outfall 03SA1 include, but are not limited to, storage/equipment areas that are located around the edge of the East Tank Farm firewater pond.

56. Section 3.4 of Respondent's SWPPP indicates that the firewater pond is designed as a collection system and only discharges under emergency overflow conditions, and that in the event that discharges occur, data from such events will be maintained and kept on file by Respondent.

57. Section 4.3 of Respondent's SWPPP, Spill Prevention and Response Procedures, includes a table that lists appropriate spill prevention and response procedures and guidelines for specific areas within the Facility. For areas used as equipment storage, the recommended procedures are, "good housekeeping maintained," "stored in covered areas or on gravel," and "routine inspections." For receiving, unloading and storage areas and raw material storage areas, the recommended procedures are good housekeeping, secondary containment system, run-off directed to the wastewater treatment plant, spill response equipment, and routine inspections.

58. During the Investigation, NEIC inspectors observed the firewater pond and the inlet and outlet for Outfall 03SA1, and the stormwater controls within the East Tank Farm, and noted the following:

- a. There was no valve or other physical control at the stand pipe for Outfall 03SA1 to regulate discharges from the firewater pond;

- b. On the day of the Investigation, there was a small discharge from Outfall 03SA1; and
- c. The equipment stored around the edge of the firewater pond was not covered and was placed on gravel.

59. Based on observations and information collected during the Investigation and review of Respondent's SWPPP and other relevant information, at the time of the Investigation, the EPA alleges that Respondent had failed to identify and implement adequate stormwater measures and controls for Outfall 03SA1 as follows:

- a. Stormwater control measures around the storage/equipment areas to prevent potential pollutants from entering the East Tank Farm firewater pond;
- b. Discharge control measures at the stand pipe for Outfall 03SA1 to ensure compliance with Permit limitations prior to allowing discharges from the fire pond; and
- c. The SWPPP did not contain an evaluation of the frequency and magnitude of WWTP bypasses, the flow capacity of the wastewater treatment and pond system, planned modes of operation based on anticipated flow and rainfall projections, and improvements to the wastewater system that can be implemented to minimize wastewater treatment system bypasses, as required by Section C, Paragraph 1 of the Permit.

60. Respondent represents that in June 2018, Respondent updated its dike draining procedures for the East Tank Farm (also known as the Sunflower Tank Farm) and procedures for sampling effluent from the firewater pond; in November 2018, Respondent updated its SWPPP; and after the NEIC Investigation but prior to the effective date of the Order for Compliance on Consent, EPA Docket No. CWA-07-2019-0049, Respondent commenced removing equipment stored on the gravel area next to the firewater pond and will by no later than March 15, 2019, complete removal of all equipment from the gravel area next to the firewater pond.

61. Respondent's alleged failure to develop an adequate SWPPP and implement stormwater control measures as required by the Permit at the time of the NEIC Investigation, as described above, was a violation of Respondent's Permit and Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

62. As alleged above, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$21,393 per day for each day during which the violation continues, not to exceed a maximum of \$267,415.

CONSENT AGREEMENT

63. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.
64. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.
65. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.
66. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.
67. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
68. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.
69. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.
70. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with the Order for Compliance on Consent, EPA Docket No. CWA-07-2019-0049, NPDES Permit No. KS0000248, Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations thereunder.

Supplemental Environmental Project

71. In settlement of this matter, Respondent shall complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements.
- a. **Project Description:** Respondent shall design, construct and implement a two-phase pollution prevention project to collect, control and provide vegetative filtration for stormwater from an approximately fifteen acres at the Facility, and shall continue to full implementation and maintenance of the project for a minimum of two (2) years following the SEP Completion Date. The project is further described in Appendix B of this Consent Agreement and Final Order;

- b. SEP Cost: The total expenditure for the SEP shall be not be less than \$205,750;
- c. Detailed SEP Description: Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit a report with a detailed description of the SEP, as described in Appendix B; and
- d. SEP Completion Date: By no later than March 31, 2020, Respondent shall complete construction and implementation of the SEP stormwater controls identified in Appendix B of this Consent Agreement and Final Order, as further described in Respondent's Detailed SEP Description.

72. Within sixty (60) days of the SEP Completion Date, Respondent shall submit a SEP Completion Report to EPA, with a copy to KDHE.

- a. The SEP Completion Report shall contain the following:
 - (i) A detailed description of the SEP, including as-built documentation, photographs, SWPPP revisions, and data regarding pollutant reductions achieved;
 - (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks, and a statement confirming that SEP expenses do not include in-house personnel or equipment costs; and
 - (iii) The following certification signed by Respondent or its authorized representative:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:

draper.seth@epa.gov
Seth Draper, or his successor
WWPD/WENF
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

73. Respondent agrees that failure to submit, or failure to timely submit, the Detailed SEP Description or the SEP Completion Report required by Paragraphs 71 and 72, above, shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 74, below.

74. Stipulated Penalties for Failure to Timely Submit and/or Complete SEP Requirements and/or Failure to Spend Agreed-on Amount:

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 71, above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP Cost described in Paragraph 71, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) Except as provided below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$102,875.
 - (ii) If the SEP is completed in accordance with Paragraph 71, but the Respondent spent at least 50 percent, but less than 70 percent, of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$40,000.
 - (iii) If the SEP is completed in accordance with Paragraph 71, but the Respondent spent at least 70 percent, but less than 90 percent, of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$20,000.
 - (iv) Respondent shall not be liable for stipulated penalties if:
 - (a) the SEP is not completed in accordance with Paragraph 71, but the Complainant determines that the Respondent: (1) made good faith and timely efforts to complete the project; and (2) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP; or
 - (b) the SEP is completed in accordance with Paragraph 71, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project.
 - (v) Respondent shall pay a stipulated penalty in the amount of \$50 for each day:
 - (a) it fails to submit the SEP Completion Report after the due date specified in Paragraph 72, above, until the report is submitted; and
 - (b) it fails to submit any other report required by Paragraph 71, above, after the report was originally due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated in Paragraph 83, below. Method of payment shall be in accordance with the provisions of Paragraphs 80 and 81, below.

75. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state

or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

76. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

77. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: *"This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."*

Civil Penalty

78. Pursuant to Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), the EPA proposes assessing a civil penalty against Respondent for the violations of the CWA identified above, the amount of which is set forth below.

79. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a mitigated civil penalty of **Eighty-Nine Thousand One Hundred Twenty-Five Dollars (\$89,125)**, within thirty (30) days after the effective date of this Consent Agreement/Final Order.

80. Respondent's payment of penalties shall reference the name of Respondent and docket number "CWA-07-2018-0220" and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

81. A copy of the check or verification of another payment method for the penalty payments remitted as directed by above, shall be submitted to:

Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

miller.patriciag@epa.gov
Patricia Gillispie Miller
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

82. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

83. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

84. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

85. The effect of settlement described above is conditional upon the accuracy of Respondent's representations to the EPA, as memorialized in Paragraph 70 of this Consent Agreement/Final Order.

86. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

87. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

88. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

89. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

90. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

91. The state of Kansas has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

92. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

93. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency, Region 7:

Date

Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division

Patricia Gillispie Miller
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: _____

Signature

Name

Title

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy emailed to representative for Respondent:

Janice DeVelasco
Vice President
Environment, Health and Safety
CVR Energy
2277 Plaza Drive, Suite 500
Sugar Land, Texas 77479
jtdevelasco@cvrenergy.com

Copy emailed to Attorney for Respondent:

Alexandra Magill Bromer
Perkins Coie
700 13th Street, NW, Suite 600
Washington, DC 20005-3960
ABromer@perkinscoie.com

Copy emailed to Attorney for Complainant:

Patricia Gillispie Miller
miller.patriciag@epa.gov

Copy by First Class Mail to:

Ms. Jaime Gaggero, Director
Kansas Department of Health and Environment
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367.

Date

Lisa Haugen
Hearing Clerk, Region 7

APPENDIX A

Coffeyville Resources Refining & Marketing, LLC
 Coffeyville, Kansas
 NPDES Permit No. KS0000248
 Violations for Outfall 02EA1

Date	Outfall	Parameter	Unit	Permit Limit 30-day ave	30-Day Ave. violation	Permit Limit daily max	Daily Max violation	Monitored Percent Exceedance	* 02EA1 MGD Flow
9/2/2014	02EA1	Phenolics, Total Recoverable	mg/l			0.35	0.69	97.14%	
9/2/2014	02EA1	Total Suspended Solids (TSS)	mg/l			33	152	360.61%	5.464
9/3/2014	02EA1	Phenolics, Total Recoverable	mg/l			0.35	0.43	22.86%	7.632
9/4/2014	02EA1	Total Suspended Solids (TSS)	mg/l			33	34	3.03%	6.360
30-Day Ave.	02EA1	Phenolics, Total Recoverable	mg/l	0.17	0.81			141.18%	
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	71.67			241.29%	19.456
10/10/2014	02EA1	Phenolics, Total Recoverable	mg/l			0.35	0.45	28.57%	
10/10/2014	02EA1	Total Suspended Solids (TSS)	mg/l			33	304	821.21%	7.314
10/11/2014	02EA1	Total Suspended Solids (TSS)	mg/l			33	53	60.61%	2.871
10/12/2014	02EA1	Total Suspended Solids (TSS)	mg/l			33	39	18.18%	6.480
10/13/2014	02EA1	Total Suspended Solids (TSS)	mg/l			33	85	157.58%	6.471
10/14/2014	02EA1	Oil & Grease (HEM)	mg/l			15	54	260.00%	
10/14/2014	02EA1	Total Suspended Solids (TSS)	mg/l			33	44	33.33%	2.588
30-Day Ave.	02EA1	Oil & Grease (HEM)	mg/l	8	12.32			54.00%	
30-Day Ave.	02EA1	Phenolics, Total Recoverable	mg/l	0.17	0.184			8.24%	
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	105			400.00%	25.724
5/24/2015	02EA1	Phenolics, Total Recoverable	mg/l			0.35	0.48	37.14%	
5/24/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	163	393.94%	3.896
5/25/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	74	124.24%	7.088
5/26/2015	02EA1	Oil & Grease (HEM)	mg/l			15	16	6.67%	
5/26/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	62	87.88%	2.651
30-Day Ave.	02EA1	Phenolics, Total Recoverable	mg/l	0.17	0.244			43.53%	
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	99.67			374.62%	13.635
6/15/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	97	193.94%	0.477
6/16/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	97	193.94%	7.502
6/17/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	56	69.70%	6.018
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	83.3			296.67%	13.997
8/19/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	162	390.91%	3.259
30-Day Ave.	02EA1	Phenolics, Total Recoverable	mg/l	0.17	0.31			82.35%	
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	162			671.43%	3.259
11/27/2015	02EA1	Phenolics, Total Recoverable	mg/l			0.35	0.7	100.00%	
11/27/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	408	1136.36%	1.685
11/28/2015	02EA1	Phenolics, Total Recoverable	mg/l			0.35	0.6	71.43%	
11/28/2015	02EA1	Total Suspended Solids (TSS)	mg/l			33	138	318.18%	0.955
30-Day Ave.	02EA1	Phenolics, Total Recoverable	mg/l	0.17	0.65			282.35%	
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	273			1200.00%	2.640
10/6/2016	02EA1	Total Suspended Solids (TSS)	mg/l			33	250	657.58%	1.673
10/7/2016	02EA1	Total Suspended Solids (TSS)	mg/l			33	157	375.76%	3.289
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	203.5			869.05%	4.865
5/3/2017	02EA1	Total Suspended Solids (TSS)	mg/l			33	42	27.27%	2.343
5/4/2017	02EA1	Oil & Grease (HEM)	mg/l			15	21.6	44.00%	
5/4/2017	02EA1	Total Suspended Solids (TSS)	mg/l			33	68	106.06%	1.287
30-Day Ave.	02EA1	Oil & Grease (HEM)	mg/l	8	12.05			50.63%	
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	55			161.90%	3.630
10/9/2018	02EA1	Total Suspended Solids (TSS)	mg/l			33	68.6	107.78%	5.260
30-Day Ave.	02EA1	Total Suspended Solids (TSS)	mg/l	21	68.6			226.67%	5.260

* 02EA1 flow information from September 2014 to current was derived from DMRs and Incident Reports

APPENDIX B

Coffeyville Resources Refining & Marketing, LLC Supplemental Environmental Project

Respondent shall design, construct and implement a two-phase pollution prevention project to collect, control and provide vegetative filtration for stormwater from approximately fifteen acres at the Facility (the "Project"). The Project location is within "Area B" of the refinery, identified in the Respondent's SWPPP at Section 3.2.2.

Phase 1: Respondent will design, construct, and implement a sheetflow minimization control. The control will be a physical structure, such as a berm or curbing, designed and installed along the northern boundary of the refinery and will exclude any area of the facility subject to effluent guidelines and the discharge from Outfall 02EA1. The structure will run approximately 2,000 linear feet. Approximately 15 acres will be impacted by this physical control. The physical structure will be designed to control an area that is primarily finished with gravel intended to prevent discharge of TSS, stormwater and the other potential pollutants described in the SWPPP under normal rainfall conditions. It is estimated to reduce TSS discharged by over 4,500 pounds/year and prevent the potential for other pollutants.

Phase 2: Respondent will install vegetative buffers for water filtration along the northern boundary. Installation of vegetative buffers is intended to prevent contamination from leaving refinery property outside of normal rainfall conditions. The vegetative buffers are expected to intercept and slow runoff to provide water quality benefits, as the filtration provided by the vegetation is an effective capture method for water pollutants including TSS, nutrients, and organics.

As required by Paragraph 71.c., Respondent will submit a "Detailed SEP Description" no later than 30 days after the CA/FO becomes effective in accordance with Paragraph 90.

The Detailed SEP Description must include the following:

- The results of a topographical survey to identify the area of the Project. The survey will confirm (1) the overland flow direction of the Project location and the immediate area around it; and (2) that drainage from areas subject to effluent guidelines are excluded from the Project.
- Respondent's selection of physical control for installation along refinery northern boundary, including the means, if necessary, by which Outfall 02EA1 will be routed around or diverted from the Project area.
- For Phase 1 and 2, a specific schedule for implementation, with a final completion date of no later than March 31, 2020.
- Description explaining the storm event the Project is designed to address, and why and how the Project is above and beyond the stormwater requirements of the facility's NPDES permit, including a review of current best management practices and controls and the planned BMPs and controls under the SEP.

- Respondent's evaluation of the expected pollutant reductions and expected sheetflow capture rate.
- Respondent's intended processes for evaluating the pollutant reductions achieved and for reporting the results to the EPA in the SEP Completion Report and one year after submittal of the SEP Completion Report.
- Respondent's plans for maintenance of Project area.
- Respondent's plans for SWPPP revisions, to be confirmed in the SEP Completion Report required by Paragraph 72.a.(i).
- A breakdown of the estimated costs for each phase of the project.