

## **COMPLIANCE AGREEMENT**

**THIS COMPLIANCE AGREEMENT** is made between the Missouri Department of Natural Resources (hereinafter the "Department"); and Environmental Management Corporation (hereinafter "EMC"), and the Jefferson County Public Sewer District (hereinafter "JCPSD").

**WHEREAS**, the Department director or his designee, on behalf of the Missouri Clean Water Commission, administers the provisions of the Missouri Clean Water Law (hereinafter "MCWL"), Chapter 644 of the Revised Statutes of Missouri (as amended) and state rules set forth in Chapter 640 of the Revised Statutes of Missouri, which are necessary for the implementation, administration, and enforcement of the federal Safe Drinking Water Act (as amended) on behalf of the Safe Drinking Water Commission; and

**WHEREAS**, EMC is a Missouri corporation in good standing which specializes in the management of water and wastewater facilities; and

**WHEREAS**, JCPSD is a sewer district in Jefferson County; and

**WHEREAS**, EMC and JCPSD plan to assume control and ownership of drinking water and wastewater services and facilities at the Raintree Plantation subdivision (hereinafter "Subdivision") that are currently owned and operated by Central Jefferson County Utilities, Inc. as soon as the Missouri Public Service Commission approves the transfer of assets and the conditions for such transfer are satisfied (hereinafter "transfer of assets") and

**WHEREAS**, the Subdivision and the water and wastewater facilities are located mostly in Sections 28, 29, 30, 31, 32, and 33, T41N, R4E, Jefferson County, Missouri; and

**WHEREAS**, the drinking water facilities consist of two wells, a 50,000 gallon water tower, and the distribution system and is operated pursuant to Permit to Dispense Water to the Public number MO-6036271; and

**WHEREAS**, the Department believes the drinking water facilities have only 25% of needed storage and Well number one exceeds the current state and Federal Action Level for lead; and

**WHEREAS**, EMC and JCPSD have agreed to add storage capacity and achieve compliance at Well 1 or modify Well 1 to achieve compliance or construct a new well and achieve compliance with Chapter 640 of the Revised Statutes of Missouri and its implementing regulations with regard to the drinking water facilities as soon as it can be reasonably achieved after the transfer of assets; and

**WHEREAS**, Missouri Safe Drinking Water provisions, Sections 640.100-640.140, RSMo, make it unlawful to violate Safe Drinking Water regulations promulgated pursuant thereto and establish civil penalties of up to and including one hundred dollars (\$100.00) per day for each violation and administrative penalties of up to one thousand (\$1,000.00) per day for each day, or part thereof for each violation, up to a maximum of twenty five thousand dollars (\$25,000.00) for each violation; and

**WHEREAS**, the Wastewater Treatment Facility, hereinafter "WWTF", serves the Subdivision and consists of an extended aeration/aerated sludge holding tank with a design flow of 64,000 gallons per day and a design population equivalent to 636 people; and

**WHEREAS**, effluent from the WWTF discharges into Galligher Creek, waters of the state, pursuant to Missouri State Operating Permit (hereinafter "MSOP") number MO-

0099473. Galligher Creek is waters of the state as defined in Section 644.016(26), RSMo Supp. 2004; and

**WHEREAS**, Discharge Monitoring Reports (hereinafter "DMRs") submitted to the Department pursuant to the requirements of MSOP number MO-0099473 indicate that the inflow of wastewater into the WWTF has exceeded the design flow of 64,000 gallons per day since July 2000; and

**WHEREAS**, DMRs submitted for the calendar year 2005 indicate the inflow of wastewater into the WWTF has averaged 100,019 gallons per day which is 56% over the daily design flow; and

**WHEREAS**, the Subdivision is platted for 3400 homes and currently consists of 627 homes with a population equivalent of 2320 people, which is 265% over the design population equivalent and new construction of homes is ongoing; and

**WHEREAS**, Department staff have observed sludge deposits in Galligher Creek below the WWTF outfall on July 7, 2003, and February 9, September 1 & 7, and November 18, 2004; and

**WHEREAS**, EMC and JCPSD have agreed to upgrade and/or replace the WWTF in order to achieve compliance with the Missouri Clean Water Law as soon as it can be reasonably achieved after the transfer of assets; and

**WHEREAS**, the Missouri Clean Water Law, Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to and including ten thousand dollars and no cents (\$10,000.00) per day for each day, or part thereof for each violation; and

**WHEREAS**, the Department, EMC, and JCPSD desire to resolve all potential disputes or claims which could be made against EMC and JCPSD for the above-alleged violations of the Missouri Clean Water Law and the Missouri Safe Drinking Water provisions if and when the transfer of assets occurs.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Department, and EMC and JCPSD further stipulate and agree as follows:

1. The provisions of this Compliance Agreement shall apply to and be binding upon the Department, EMC, and JCPSD, as well as their successors in interest, and their successors in office. Further, each party executing this Compliance Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Compliance Agreement.

2. Under no condition shall any construction take place to modify, correct or replace any portion of the drinking water facilities or the WWTF until a construction permit, has been issued by the department, and all such construction must be in strict compliance with the approved plans and specification reviewed and approved by the department.

3. Upon transfer of the assets, EMC and JCPSD agree to complete construction to upgrade and expand the drinking water facilities according to the following schedule subject to any excused delays as provided in paragraph 6, below (documents required by this schedule shall be submitted to the Department's St. Louis Regional Office at 7545 S. Lindbergh, Suite 210, St. Louis, Mo. 63125):

Activity	Deadline
Submit a report, prepared by an engineer registered in Missouri, and for the Department's review and approval, on drinking water system needs to include source water, treatment, and storage needs.	Within 60 days of the transfer of assets.
Submit, to the Department for review and approval, plans and specifications and a complete application for construction.	Within 90 days of approval of the engineering report on system needs.
Complete construction of a new well and storage facility or alternative approved treatment method of lead levels in well number one.	Well construction to be complete within 180 days of issuance of Construction Permit; Storage facility construction to be completed within 365 days of issuance of Construction Permit.
Submit engineers As Built certification on the new well and storage facility.	Within 30 days of completion of construction.
Submit a revised application for a Permit to Dispense Water to the public showing changes in ownership and management of the utility.	At least 30 days prior to new well being used to dispense.
Work with staff from the Department's St. Louis Regional Office in completing a Capacity Development review of the public water supply to include evaluation of the system's ability to meet technical, managerial and financial requirements as required in 10 CSR 60-3.030.	Begin review within 60 days of the transfer of assets and finalize that review within 90 days of the transfer of assets.

4. In the interim, from the date of the transfer of assets to the date the improvements are complete, EMC and JCPSD shall notify residents of the Subdivision when Well number one is being used and mixed in the distribution system.

5. Upon transfer of the assets, EMC and JCPSD agree to complete construction to upgrade and expand the WWTF according to the following schedule subject to any excused delays as provided in paragraph 6, below (documents required by this schedule shall

be submitted to the Department's St. Louis Regional Office at 7545 S. Lindbergh, Suite 210, St. Louis, Mo. 63125):

Activity	Deadline
Submit, to the Department for review and approval, plans and specifications and a complete application for construction prepared by an engineer registered in Missouri.	Within 60 days of the transfer of assets.
Complete construction of upgrades and expansion to the WWTF.	Within 240 days of the Department's issuance of a Construction Permit.
Submit an engineer's certification of work complete.	Within 30 days of completion of construction.
Submit an application, Form B, for the modification of the MSOP to the Department. The application should include a description of the upgrades and expansion to the WWTF.	At least 30 days prior to the WWTF receiving wastewater from the subdivision.
Achieve compliance with all applicable permit effluent limits contained in part A of the MSOP for the WWTF.	Within 45 days of the WWTF receiving wastewater from the subdivision.

6. The Department and the United States Environmental Protection Agency are entitled to seek \$10,000.00 and \$32,000.00, respectively, per day per violation of the Clean Water Act, but instead of these have chosen in this case to assess stipulated penalties. For each day that EMC and JCPSD fails to meet any deadline set forth in the compliance schedule in paragraph 3 and 5, EMC and JCPSD agrees collectively to pay the following stipulated amounts according to the following schedule:

- A. Two Hundred Fifty and 00/100 Dollars (\$250.00) per day for the first thirty (1-30) days;
- B. Five Hundred and 00/100 Dollars (\$500.00) per day for thirty to ninety (30-90) days;
- C. One Thousand and 00/100 Dollars (\$1000.00) per day after ninety

(90+) days.

Said stipulated sums shall be paid within ten (10) days of demand by the Department and shall be in the form of a certified check or cashier's check made payable to the "State of Missouri (Jefferson County School Fund)" and delivered to Duane E. Schreimann, Schreimann, Rackers, Francka & Blunt, L.L.C., 2316 St. Mary's Blvd., Suite 130, Jefferson City, MO 65109. This stipulated penalty is not a civil penalty, nor an administrative penalty, rather it is a sanction for not complying with the terms of this agreement. With regard to delays in the upgrade and construction of the WWTF, upgrade and expansion of the drinking water facilities, or any other deadline in the compliance schedule in paragraphs 3 and 5, due to weather conditions or any other causes beyond EMC and JCPSD's reasonable control ("excused delay"), it is EMC and JCPSD's responsibility to inform the Department of the nature and extent of the delay. EMC and JCPSD agree to cooperate with the Department and provide any necessary information and documents to support the tolling of the deadline and the determination of how long the deadline will be tolled for excused delays. EMC and JCPSD agree that all determinations regarding the tolling of the affected deadline(s), including the length of time the deadline is tolled, because of an excused delay, shall be made by the Department in good faith and the Department shall be reasonable in agreeing to extensions.

7. SANITARY SEWER STUDY AND IMPROVEMENT PLAN

A. Within three hundred sixty-five (365) days after the transfer of assets, EMC and JCPSD shall submit a Sanitary Sewer Study and Improvement Plan (SSSIP) to the Department's St. Louis Regional Office for review and approval. The SSSIP shall contain a proposed priority based schedule for the implementation of improvements and upgrades, which improvements and upgrades shall be completed as soon as reasonably

practicable. As part of the SSSIP, the parties agree to develop jointly a final agreed schedule for completion of the improvements and upgrades. Within thirty (30) days of receipt of approval by the Department, EMC and JCPSD shall begin implementation of the SSSIP. Should EMC and JCPSD fail to obtain Department approval of the SSSIP, including a final agreed schedule for completion of the improvements and upgrades, the Department, notwithstanding the provisions of paragraph 10 herein, reserves the right to pursue enforcement action against EMC and JCPSD for violations of state and federal law disclosed by the SSSIP.

B. The SSSIP shall be prepared by a Missouri licensed professional engineer, and it shall recommend upgrades that are necessary and reasonable to achieve the following:

- (1) Reduce excess infiltration and inflow (I & I);
- (2) Reduce odor problems in the collection system;
- (3) Use reasonable operations and maintenance practices on sewer system to aid in the prevention of burnout of grinder pumps in the pressure sewer system;
- (4) Use reasonable operations and maintenance practices on sewer system to prevent bypasses from lift stations, manholes, and collection system; and
- (5) Reduce conditions favorable to residential basement backups.

The recommended upgrades should include physical repairs, lift station improvements, and additional collection system lines that may be needed. The implementation schedule must be such that the most urgently needed upgrades are achieved in a timely manner. Future system expansion needs must be considered in the SSSIP, and the necessary major



components that will have to be added to the collection system to serve future growth should be identified.

C. The SSSIP shall be based on a survey of the collection system, exclusive of private service lines, laterals, and grinder pumps, in order to identify sources of infiltration and inflow, locations where odor problems may exist, and current pressures in the collection system. The adequacy of all lift stations shall be assessed in terms of their compliance with the design guidelines in 10 CSR 20-8.130, with special considerations being given to provisions for adequate emergency storage capacity and emergency alarm systems.

D. The SSSIP shall include an I & I survey, which shall include physical inspection and diagnostic testing of the mains and laterals which may be suspect. Field inspections shall include, but shall not be limited to, manhole inspections, pipe lamping, smoke testing, selective cleaning, and closed circuit television inspections. At a minimum, the survey shall identify and quantify sources of I & I. As owners of the system, JCPSD will assess collection system capacity.

8. Unless otherwise agreed to by the Department and United States Environmental Protection Agency, EMC and JCPSD agree to prohibit all new sewerage connections to the collection system for the WWTF until upgrades and the expansion to the WWTF are complete and the WWTF has the capacity to adequately treat the additional wasteload.

9. EMC and JCPSD agree to notify the Department of a sewage bypass event within twenty-four (24) hours.

10. During all said periods of time set forth herein, the Department will not take enforcement action against EMC and JCPSD so long as EMC and JCPSD are in compliance with the terms of this Agreement and except as herein stated. In the interim, from the date of this Compliance Agreement to the date all improvements contemplated herein are complete, EMC and JCPSD shall take all practicable efforts to operate and maintain the WWTF so as to produce the best quality effluent possible with the equipment in place during such interim period. Likewise, EMC and JCPSD shall take all practicable efforts to insure that the operation of the public water supply and the quality and quantity of that supply is in conformance with the Missouri Safe Drinking Water provisions, Chapter 640, RSMo, and their implementing regulations. Nothing in the Compliance Agreement shall be construed as excusing or forgiving noncompliance with the Missouri Clean Water Law, Chapter 644, RSMo, and the Missouri Safe Drinking Water provisions, Chapter 640, RSMo and their implementing regulations, resulting from EMC's or JCPSD's intentional, willful or negligent conduct during all said periods of time set forth herein. Nothing in this Compliance Agreement shall be construed as excusing, forgiving, releasing, or waiving any claim's against EMC's or JCPSD's predecessors in interest for any violations of state or federal law, including but not limited to, violations of Chapters 640 and 644, RSMo, and their implementing regulations.

11. Nothing in this Compliance Agreement shall be construed as excusing or forgiving future noncompliance with the Missouri Clean Water Law, Chapter 644, RSMo, and the Missouri Safe Drinking Water provisions, Chapter 640, RSMo and their implementing regulations. In the event that EMC and JCPSD fail to substantially comply with any material terms as specified herein, a breach of this Compliance Agreement shall be deemed to have occurred and litigation to require compliance or any other remedies will be pursued, including

but not limited to, filing suit for the violations of the Chapter 644 and 640, RSMo, as alleged in this Compliance Agreement.

12. In consideration for the release contained herein, EMC and JCPSD agree to comply with all State of Missouri Environmental Statutes and Public Drinking Water statutes and their implementing regulations for any and all future activities in the State of Missouri. Nothing herein shall be construed as forgiving future non-compliance with all State of Missouri Environmental Statutes and Public Drinking Water statutes and their implementing regulations.

13. Execution of this Compliance Agreement shall be complete when the Department has signed and dated the Compliance Agreement. As the last party signing the Compliance Agreement, the Department shall promptly distribute copies of the executed Compliance Agreement to the other signatories.

14. Each signatory to this Compliance Agreement avers that he or she has the authority to bind his or her respective party to this Compliance Agreement as evidenced by his or her signature on this Compliance Agreement.

15. The terms stated hereinabove constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they express or implied, oral or written, except those which are expressly set forth hereinabove. The terms of this agreement supercede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This agreement may not be modified orally.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first-above written.

**Jefferson County Public Sewer District**

By: Martin Toms

DATE: 1/16/07

OK  
DGM  
1/17/07

**Environmental Management Corporation, Inc.**

By: Devalynn A Kostecki

DATE: 1/17/07

**Missouri Department of Natural Resources**

By: Daniel R. Schuette  
Daniel R. Schuette, Director  
Division of Environmental Quality

DATE: 1/17/07