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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	Docket No. CWA-07-2016-0047
	)	
TROY, MISSOURI,	)	
	)	
	)	COMPLAINT AND
	)	CONSENT AGREEMENT/
	)	FINAL ORDER
Respondent,	)	
	)	
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 United States Environmental Protection Agency's (EPA) 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 (Consolidated Rules of Practice).

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

Parties

3. 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 this authority to the Regional Administrator of EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondent is Troy, Missouri (hereafter "Respondent" or "the City"), a political subdivision of the state of Missouri and a "municipality" within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works (POTW) that treats domestic, commercial, and industrial wastewater.

Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. The CWA 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.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial and municipal waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the "waters of the United States," which are defined at 40 C.F.R. § 122.2 and which include tributaries to waters of the United States.

11. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

12. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

13. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and MDNR. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311 and/or a term or condition of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Background

15. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. Since 1973, Respondent has owned and operated the wastewater treatment facility located at Highway 47 and its associated sewer collection and transmission systems, which receive and treat wastewater from residential, commercial and industrial connections within Troy, Missouri. In 2007, the City constructed a second wastewater treatment facility that is located in the Southeast portion of the City.

17. Each of Respondent's wastewater treatment facilities described in Paragraph 16 is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

18. Each of Respondent's wastewater treatment facilities causes the "discharge of pollutants" as defined by the CWA Section 502(12), 33 U.S.C. § 1362(12).

19. The City's Hwy 47 wastewater treatment facility discharges pollutants into Town Branch, a tributary of the Cuivre River. The City's Southeast wastewater facility discharges pollutants into the Cuivre River. Town Branch and the Cuivre River are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

20. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 et seq., and as such Respondent's discharge of pollutants requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. MDNR issued NPDES Permit No. MO-0054623 (hereafter "2005 NPDES permit") to the City, effective March 18, 2005 and expiring March 17, 2010 for discharges from its Hwy 47 POTW into the Cuivre River through Outfall 002 (primary-treated overflow from peak flow basin) and into Town Branch through Outfall 003 (secondary-treated plant effluent). MDNR reissued NPDES Permit No. MO-0054623 (hereafter "2012 NPDES permit") to the City, effective December 1, 2012 and expiring March 31, 2014, for discharges from its Hwy 47 POTW into Town Branch through Outfall 003. MDNR issued NPDES Permit No. MO-0131296 (hereafter "2014 NPDES permit") to the City effective February 1, 2014 and expiring January 31, 2019, for discharges from its Southeast POTW into the Cuivre River through Outfall 001. MDNR issued NPDES Permit No. MO-0054623 to the City, effective November 1, 2016 and expiring March 31, 2019, for discharges from the Hwy 47 POTW.

22. The City's 2005 NPDES permit and 2012 NPDES permit (collectively "NPDES Permits") authorize the City to discharge pollutants only from specified point sources, to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES Permits.

23. On June 5-6, 2005, the EPA performed an inspection (hereafter "the 2005 EPA inspection") of the city of Troy wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). As a result of the 2005 EPA inspection, EPA and the city of Troy entered into a Consent Agreement/Final Order resolving the violations identified in the above referenced inspection.

24. On or about December 2, 2011, the EPA submitted a Request for Information Pursuant to Section 308 of the Clean Water Act (33 U.S.C. § 10318) to the City requesting information related to the operation of the City's wastewater treatment facilities and received the City's response to that request on or about December 16, 2011.

25. On or about February 23, 2015, MDNR issued a Notice of Violation regarding discharges below the State Water Quality Standards due to untreated bypasses at the City of Troy Highway 47 Wastewater Treatment Facility (WWTF) on December 9 & 10, 2014.

26. On or about April 29, 2015, the EPA submitted a Request for Information Pursuant to Section 308 of the Clean Water Act (33 U.S.C. § 1318) to the City requesting information related to the operation of the City's wastewater treatment facilities and received the City's response to that request on or about May 22, 2015.

27. On November 16 – 20, 2015, the EPA performed another inspection (hereafter the "2015 Hwy 47 WWTF inspection") of the City's Hwy 47 WWTF under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). On November 16 – 20, 2015, the EPA also performed an inspection (hereafter the 2015 SEWWTF inspection") of the City's Southeast WWTF under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

ALLEGATIONS

28. The facts stated above, are herein incorporated.

29. Based on observations documented during the EPA inspections and review of available information, EPA alleges that Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by violating the terms and conditions of its NPDES permits, in at least the following ways:

Count I
Failure to Comply with Effluent Limitations

30. The City's NPDES permits for discharges from the City's Hwy 47 WWTF and the Southeast WWTF establish effluent limitations for various pollutants, including, but not limited to, Carbonaceous Biochemical Oxygen Demand (CBOD), Total Suspended Solids (TSS), Ammonia, Dissolved Oxygen, Copper, and E.coli.

31. EPA's review of Discharge Monitoring Reports (DMRs) submitted to MDNR covering the months of January 2012 through December 2015 revealed the City discharged pollutants in excess of the effluent limits set forth in its NPDES permits for the Hwy 47 WWTF

on at least 76 occasions as detailed in Appendix A attached hereto. EPA's review of DMRs submitted to MDNR from February 2014 through September 2015 revealed the City discharged pollutants in excess of the 2014 NPDES permit limits for its Southeast WWTF on at least 4 occasions as detailed in Appendix B enclosed hereto.

32. The City's discharge of wastewater into waters of the U.S. in excess of the effluent limitations is a violation of the terms and conditions of its NPDES permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count II

Failure to Comply with Monitoring and Reporting Requirements

33. The City's NPDES permits for discharges from both of the City's WWTFs include requirements to monitor flow, CBOD, TSS, Ammonia, E. coli, Oil and Grease, chlorine, dissolved oxygen, lead and copper.

34. EPA's review of DMRs submitted to MDNR covering the months of January 2012 through December 2015 revealed the City failed to comply with the monitoring requirements set forth in its NPDES permits for the City's Hwy 47 WWTF on at least six occasions and failed to monitor as required by the NPDES permit for the Southeast WWTF on at least seven (7) occasions as detailed in Appendix C enclosed hereto.

35. The City's failure to comply with the monitoring requirements is a violation of the terms and conditions of its NPDES permits, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count III

Unauthorized Discharges

36. The City's 2005 NPDES permit for discharges from the Hwy 47 WWTF authorizes the City to discharge pollutants only from specified point sources, identified in the NPDES permits as "Outfall #002" and "Outfall #003," to specified waters of the United States only after the wastewater was treated in the WWTF, subject to the limitations and conditions set forth in the NPDES permit. The City's 2012 NPDES permit for discharges from the City's Hwy 47 WWTF explains that discharges from Outfall #002 are no longer authorized, shall be subject to 40 CFR 122.41(m) and shall be reported according to 40 CFR 122.41(m)(3)(i) & (ii).

37. Special Condition 9 of the 2012 NPDES permit and Special Condition 10 of the 2014 NPDES permit state that bypasses are not authorized and are subject to 40 CFR 122.41(m). If a bypass occurs, the permittee shall report in accordance to 40 CFR 122.41(m)(3)(i), and with Standard Condition, Part I, Section B, subsection 2.b. of the 2012 and 2014 NPDES permits.

38. EPA's review of SSO and bypass reports submitted to MDNR revealed the City discharged over 25,000,000 gallons of partially treated wastewater containing sewage from unauthorized locations at the Hwy 47 WWTF into waters of the U.S. on the following dates:

- April 12 & 19, 2013;
- February 8, March 14, April 3, June 10, September 10, October 2, December 9 and December 23, 2014; and
- January 3, April 10, June 9, June 25, July 8, July 20, November 17, November 27, December 14, December 23, and December 26, 2015.

39. EPA's review of SSO and bypass reports submitted to MDNR covering the months of January 2012 through December 2015 revealed the City of Troy discharged a total of 2,997,250 gallons of wastewater containing untreated sewage from unauthorized locations to waters of the United States on 15 occasions as specified below:

- December 19, 2012;
- March 17, April 10, May 31, September 18, and October 23, 2013;
- April 3, April 29, May 11, May 12, and October 2, 2014; and
- March 26, November 17, December 26, and December 28, 2015.

40. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

41. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 53 below.

CONSENT AGREEMENT

42. This CA/FO addresses all civil and administrative claims for the CWA violations identified above, existing through the effective date of this CA/FO. EPA reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law. EPA further reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

43. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

44. Respondent admits the jurisdictional allegations set forth in this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

45. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

46. Respondent waives any right to contest the allegations set forth in this Consent Agreement/Final Order and its right to appeal this Consent Agreement and the accompanying Final Order.

47. Respondent and Complainant each agree to resolve 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.

48. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

49. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

50. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent is in compliance with all requirements of the CWA and its NPDES permit.

51. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA.

52. Respondent consents to the issuance of the Final Order hereinafter recited and agrees to pay a mitigated civil penalty in the amount of $100,000.

53. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

54. 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.

Supplemental Environmental Project

55. 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 will replace standard facility light fixtures with energy-efficient, light-emitting diodes (LED) at its facility.

b. SEP Cost: the total expenditure for the SEP shall be not less than $60,000.

c. Completion Date: All work on the project shall be completed and in full operation by no later than two years from the effective date of this Order.

56. Within thirty (30) days of the SEP Completion Date, as identified above, Respondent shall submit a SEP Completion Report to EPA.

a. The SEP Completion Report shall contain the following:
   (i) A detailed description of the SEP as implemented;
   (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks; 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:

Wayne Dillard, or his successor
WWPD/WENF
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard

Lenexa, Kansas 66219.

c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties described below.

57. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

58. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-upon 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 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP Cost set forth above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately 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 $60,000;

(ii) If the SEP is completed in accordance with this Consent Agreement, but the Respondent spent less than 85 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 the calculated difference between $60,000 and the amount actually spent;

(iii) Respondent shall pay a stipulated penalty in the amount of $100 for each day it fails to submit the SEP Completion Report after the due date specified above, 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 below. Method of payment shall be in accordance with the provisions below.

d. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement/Final Order.

59. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP is not less than $60,000;

b. That, as of the date of executing this Consent Agreement/Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement/Final Order;

d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity; and

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

60. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described below.

61. 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 on behalf of the United States Environmental Protection Agency to enforce federal laws."

Reservation of Rights

1. 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.

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

Penalty Payment

3. Respondent shall pay a civil penalty of One Hundred Thousand dollars ($100,000) within thirty calendar days of the effective date of this Final Order. Respondent shall

pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2016-0047 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and to:

Elizabeth Huston
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the 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 and interest thereon.

5. 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.

Parties Bound

6. This Final Order shall apply to and be binding upon Respondent, his agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein, comply with the terms of this Consent Agreement/Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy Director Water, Wetlands and Pesticides Division	Date
Elizabeth Huston Assistant Regional Counsel	Date

RESPONDENT:
CITY OF TROY, MISSOURI

1/18/2017
Date

MARK A. CROSS
Name

Mark A. Cross
Signature

MAYOR
Title

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the aforegoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The 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 _____

Mark Hague
Regional Administrator