

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

Received by  
EPA Region 7  
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2022-0117
The City of Dixon,	)	
	)	COMPLAINT AND
Respondent	)	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. 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, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (the “Complainant”).
3. Complainant and the City of Dixon (“Respondent” or “the City”) 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).
4. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 405 of the CWA, 33 U.S.C. § 1345, and regulations promulgated thereunder and codified at 40 C.F.R. Part 503.

**Statutory and Regulatory Framework**

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

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

7. Section 402 of the CWA 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.

8. 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.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States,” which in turn has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

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

11. The Missouri Department of Natural Resources (“MoDNR”) 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, the implementing regulations, and a Memorandum of Understanding between EPA and MoDNR.

12. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

#### **EPA’s General Allegations**

13. The City of Dixon is a municipality organized under the laws of Missouri, and as such is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. The City owns and operates a wastewater treatment facility (“WWTF”) and its associated sewer collection and transmission systems, which receive and treat wastewater from primarily residential sources within Dixon, Missouri, and which together are a Publicly Owned Treatment Works (“POTW”), as defined by 40 C.F.R. § 403.3(q).

15. The City’s POTW discharges to an unnamed tributary to the Maries River, which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

16. The effluent from the City’s POTW is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The City's POTW is a "point source" that "discharges pollutants" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

18. The City's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. On November 14, 2016, MoDNR issued NPDES Permit No. MO-0100129 to the City for discharges from its POTW to the unnamed tributary to the Maries River (the "2016 NPDES Permit"). The 2016 NPDES Permit became effective on December 1, 2016, and expired on March 31, 2021.

20. MoDNR then issued NPDES Permit No. MO-0100129 (the "2021 NPDES Permit") to the City for discharges from its POTW to the unnamed tributary to the Maries River. The NPDES permit became effective on April 1, 2021, and will expire on March 31, 2026.

21. At all times relevant to this action the City operated under the conditions or limitations of the 2016 or 2021 NPDES Permits.

22. On October 22, 2020, MoDNR inspected the POTW. MoDNR then issued a notice of violation for, *inter alia*, allowing discharge from a sludge holding basin in a location where it was reasonably certain to cause pollution of the waters of the State and failing to submit an Annual Sludge Report covering the year 2019. In addition, MoDNR recommended that the City remove sludge from the sludge holding basins to provide capacity and that it waste sludge as necessary to provide optimal wastewater treatment.

23. On August 17 and 18, 2021, an EPA representative performed a Compliance Sampling Inspection (the "August 2021 EPA inspection") of the City's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with the 2021 NPDES Permit and the CWA.

24. During the August 2021 EPA inspection, the inspector collected wastewater samples from the City's WWTF receiving stream and holding basins, reviewed the City's records related to the 2021 NPDES Permit, and observed the WWTF and the receiving stream to which Outfall 001 discharges. The EPA inspector's observations included, but were not limited to, the following:

- a. The biosolids holding basins were nearly full and were covered by a three to six inch mat of vegetation;
- b. WWTF operators stated that minimal amounts of biosolids were being wasted from the clarifiers to the basins, and instead, most activated sludge was returned to the oxidation ditch;

- c. A WWTF employee stated that biosolids had not been land applied since 2017, although the permit stated that land application was the method of disposal;
- d. Discharged biosolids were present in the receiving stream and were visible for approximately 100 yards downstream of Outfall 001; and
- e. The most recent Annual Biosolids Report covered the year of 2017, and reports for the years 2018, 2019, and 2020 were unavailable. A WWTF employee stated that reports had not been prepared for those years.

**EPA's Findings of Violation**

25. The facts stated above are incorporated herein by reference.

**Count 1: Failure to Properly Waste Biosolids**

26. Section D of the 2021 NPDES Permit incorporates attached Standard Conditions dated May 1, 2013, August 1, 2014, and August 1, 2019.

27. Paragraph 5 of the August 1, 2014, Standard Conditions requires the City to “at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used . . . to achieve compliance with the conditions of the permit.”

28. During the August 2021 EPA inspection, WWTF operators stated that WWTF operators stated that because the biosolids holding basins were at or near capacity with only 1–2 feet of freeboard, the City had been recycling activated sludge rather than wasting adequate quantities of sludge from the clarifiers. By failing to waste appropriate quantities of sludge, the City is and has been impairing the operation of the WWTF and causing solids to be discharged into the receiving stream.

29. The City’s failure to properly operate and maintain the WWTF is a violation of the conditions or limitations of the 2021 NPDES Permit 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 2: Failure to Land Apply Biosolids**

30. The 2016 and 2021 NPDES Permits require Respondent to land apply biosolids as its method of disposal.

31. During the August 2021 EPA inspection, a WWTF employee stated that biosolids had not been land applied since 2017.

32. Failure to land apply biosolids is a violation of the conditions or limitations of the City's NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3: Presence of Biosolids in Receiving Stream

33. The 2021 NPDES Permit authorizes the City to discharge from the WWTF in accordance with the effluent limitations and monitoring requirements set forth in the permit.

34. Part A of the 2021 NPDES Permit establishes effluent limitations for Outfall 001 and requires that there shall be no discharge of floating solids or visible foam in other than trace amounts.

35. The portion of the 2021 NPDES Permit which sets forth general conditions for Outfall 001 specifies in paragraph (B) that waters shall be free from oil, scum, and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses.

36. The August 2021 EPA inspection and review of the City's monitoring reports submitted to MDNR revealed that the City discharged wastewater from Outfall 001 containing floating solids.

37. Discharging visible solids into the receiving stream constitutes a violation of the conditions or limitations of the 2021 NPDES Permit 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 4: Failure to Prepare Biosolids Annual Reports

38. Part K of the August 1, 2019 Standard Conditions of the 2021 NPDES Permit requires the City to maintain records of the information described in Part K(5) of the August 1, 2019 Standard Conditions at the facility for at least five years and to make them available to MoDNR and EPA personnel upon request.

39. During the August 2021 EPA inspection, a WWTF employee stated that portions of those records were not available for review because the City had not prepared Biosolids Annual Reports for the years 2018, 2019, and 2020.

40. The City's failure to prepare and maintain the records required by the August 1, 2019, Standard Conditions of the 2021 NPDES Permit is a violation of the conditions or limitations of the 2021 NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 5: Failure to Comply with Effluent Limitations

41. The 2016 NPDES Permit established monthly average discharge limits for ammonia of 1.1 mg/L in between April 1 and September 30 and 2.5 mg/L between October 1 and March 31.

42. The 2021 NPDES Permit established monthly average discharge limits for total suspended solids (TSS) of 30 mg/L.

43. Respondent's POTW effluent exceeded the ammonia as nitrogen limits of the 2016 NPDES Permit in April and July of 2019 and December of 2020 and the TSS limit of the 2021 NPDES Permit on February 28, 2022.

44. Each failure to comply with effluent limitations is a violation of the conditions or limitations of the 2016 or 2021 NPDES Permits and, as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

### **CONSENT AGREEMENT**

45. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.

46. 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.

47. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

48. Respondent waives its right to contest any issue of fact or law set forth above, and Respondent's rights to appeal this Consent Agreement/Final Order.

49. Respondent and Complainant 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 incurred as a result of this action.

50. Respondent consents to receive service of the filed Consent Agreement and Final Order electronically at the following email address: *mikkenull50@yahoo.com*.

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

52. 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.

53. Respondent certifies by the signing of this Consent Agreement/Final Order that the WWTF is in compliance with the CWA.

**Penalty Payment**

54. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Twenty Two Thousand, Two Hundred Dollars (\$22,200)** to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

55. The penalty payment shall identify Respondent by name and docket number "CWA-07-2022-0117," and shall be by certified or cashier's check made payable to "Treasurer, United States of America," and sent to:

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

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

56. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Natasha Goss  
Attorney-Advisor  
U.S. Environmental Protection Agency Region 7  
[goss.natasha@epa.gov](mailto:goss.natasha@epa.gov)

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 7  
[r7\\_hearing\\_clerk\\_filings@epa.gov](mailto:r7_hearing_clerk_filings@epa.gov)

57. 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.

58. 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 set forth above 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**

59. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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.

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

61. 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.

62. 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.

63. 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**

64. 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.

65. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the Regional Judicial Officer. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

66. The state of Missouri 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).

67. 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.

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

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

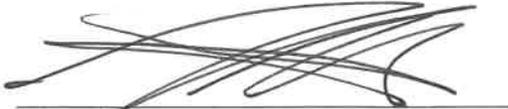
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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Natasha Goss  
Attorney-Advisor  
Office of Regional Counsel

**For Respondent, the City of Dixon, Missouri:**



Signature

11-15-22

Date



Name



Title

**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.

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

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer



**Certificate of Service**

I certify that on the date noted below I sent a true and correct copy of the foregoing Complaint and Consent Agreement / Final Order by electronic mail to:

Representative for Respondent:

Michael Null  
Mayor of the City of Dixon  
P.O. Box 177  
Dixon, Missouri 65459  
*mikkenull50@yahoo.com*

Representatives for Complainant:

Angela Acord  
Enforcement and Compliance Assurance Division  
*acord.angela@epa.gov*

Natasha Goss  
Office of Regional Counsel  
*goss.natasha@epa.gov*

Representatives of the State of Missouri:

John Hoke  
Water Pollution Control Branch Chief  
*john.hoke@dnr.mo.gov*

Joe Stoops  
Missouri Department of Natural Resources  
*joe.stoops@dnr.mo.gov*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name