



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION

Reply To: 20-CO4

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

The Honorable Kenneth Whitney, Jr.
Mayor of the City of Troy
P.O. Box 595
519 South Main Street
Troy, ID 83871

Re: City of Troy
Docket No. CWA-10-2019-0060

Dear Mr. Whitney:

Enclosed is the Administrative Order on Consent (AOC) issued to, and agreed upon by, you in your capacity as Mayor of the City of Troy ("City") pursuant to Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a). The AOC addresses violations of the CWA and future management of the City's facility in compliance with the CWA.

Should you have any technical questions regarding this Administrative Order, please contact Stacey Kim at (206) 553-1380. Legal questions should be addressed to William McLaren, Assistant Regional Counsel, at (206) 553-1938. Please note that the address has changed to 1200 Sixth Avenue, Suite 155, Mail stop: 20-C04, Seattle, WA 98101. Thank you for your time and attention in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward J. Kowalski".

Edward J. Kowalski
Director

Enclosure: Administrative Order on Consent

cc: John Tippetts,
Director - Idaho Department of Environmental Quality

Susan Wilson,
Attorney at Law

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REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Troy, Idaho,

Respondent.

DOCKET NO. CWA-10-2019-0060

**ADMINISTRATIVE ORDER ON
CONSENT**

I. STATUTORY AUTHORITY

1.1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the City of Troy (“Respondent”) and is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 308 and 309(a) of the Clean Water Act (“Act”), 33 U.S.C. §§ 1318, 1319(a). This authority has been delegated to the Regional Administrator of EPA Region 10, and has been redelegated to the Director of the Enforcement and Compliance Assurance Division.

1.2. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–708.

II. FINDINGS AND CONCLUSIONS

2.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable

waters from any point source.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

2.2. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

2.3. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” The term “navigable waters” is defined as “waters of the United States.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” 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; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. §§ 122.2 & 110.1 (2014).

2.4. Respondent is a “municipality” as defined in CWA Section 502(4), 33 U.S.C. § 1362(4), and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

2.5. Respondent is the owner and/or operator of a wastewater treatment plant (“Facility”) located in Troy, Idaho.

2.6. NPDES Permit ID-002360-4 (“WWTP Permit”) was issued to Respondent on March 5, 2004. The WWTP Permit became effective on May 1, 2004 and was set to expire on April 30, 2009. Respondent did not submit a timely and complete application to renew the Permit and the Permit expired on April 30, 2009.

2.7. Respondent failed to apply for a new permit in a timely manner as required by 40 C.F.R. § 122.21(d) and Section IV.B of the Permit. Due to Respondent’s failure to submit a timely application, the Permit was neither administratively extended nor reissued. Nonetheless, Respondent continued operating pursuant to the WWTP Permit.

2.8. The Facility, which was under Respondent's control at all times relevant to this action, discharges pollutants from Outfall 001, which is located at latitude 46° 43' 53" North and longitude 116° 45' 22" West, into the West Fork Little Bear Creek. Outfall 001 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

2.9. The Facility discharges domestic wastewater containing pollutants into West Fork Little Bear Creek which flows into the Potlatch River then to the Clearwater River and then into the Snake River. The West Fork Little Bear Creek is protected by the State of Idaho for cold water refuges, salmonid spawning, and secondary contact recreation. The West Fork Little Bear Creek and the Potlatch, Clearwater, and Snake Rivers are "navigable waters" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

2.10. At all times relevant to this action, Respondent has been discharging from the Facility without a valid permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a)

2.11. By discharging domestic wastewater containing pollutants from the Facility into waters of the United States, Respondent engaged in a "discharge of pollutants" from a point source within the meaning of Sections 302(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

2.12. Section I.A of the expired WWTP Permit established effluent limitations for the discharge from Outfall 001 and includes limits for biochemical oxygen demand (BOD), total suspended solids (TSS), total residual chlorine (TRC), *Escherichia coli* (*E. coli*) bacteria, and pH.

2.13. Section II.B of the expired WWTP Permit required Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report ("DMR").

2.14. Respondent submitted an application to EPA for renewal of the expired WWTP Permit in 2012 and EPA determined the Respondent's application was complete in 2013 but did not thereafter renew the application and has not since done so due to no fault of Respondent.

2.15. At all times relevant to this action, Respondent submitted DMRs in accordance with the WWTP Permit, despite its expiration.

2.16. Respondent's DMRs reflect that the Facility would have violated effluent limitations set forth in the WWTP Permit for 22 months of the time period spanning December 2013 through June 2018, had the WWTP Permit been renewed by EPA.

2.17. Respondent's discharges of wastewater from the Facility to West Fork Little Bear Creek were a violation of Section 301(a) the CWA, 33 U.S.C. § 1311(a).

III. ORDER ON CONSENT

3.1. Based upon the foregoing and pursuant to Sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), it is AGREED and ORDERED as follows:

3.1.1 By the effective date of this Order, Respondent shall have completed the following proposed operational and structural changes at the Facility: 1) restoring flow from the bottom of Cell 3 to the clarifier; 2) thorough cleaning of the contact basin.

3.1.2 By September 30, 2020, Respondent shall complete the following proposed operational and structural changes at the Facility: 1) replacement of flow metering equipment, and 2) installation of automated chemical dosing pumps.

3.1.3 By September 30, 2020, Respondent shall submit a completed Facility Plan in accordance with applicable state laws and regulations, including but not limited to submitting the Plan to the Idaho Department of Environmental Quality for review and approval pursuant Idaho Code 39-118.

3.1.4 Pending the issuance of a new permit, and until any such new permit is in full force and effect, Respondent shall continue to comply with the expired WWTP permit.

3.2. In the event Respondent is unable to comply with the requirements of this ORDER, Respondent shall, within 10 days of becoming aware of such inability, provide the following:

3.2.1 A summary of the specific reasons why Respondent is unable to comply with the requirement;

3.2.2 A summary of all actions taken by Respondent or others which Respondent alleges demonstrate “good faith efforts” to comply; and

3.2.3 The expected date and required activities by which Respondent will comply with the requirement.

3.3. Submittals required by this Order must be sent to the following:

U.S. Environmental Protection Agency
Region 10, M/S 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Attn: Stacey Kim

Idaho Department of Environmental Quality
State Water Quality Division
1410 N. Hilton St.
Boise, ID 83706
Attn: Tyler Fortunati

3.4. The provisions of this Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

3.5. This Order supersedes the requirements of previous compliance orders issued under the Clean Water Act and agreed upon by Respondent and EPA Region 10.

3.6. This Order will take effect upon signature by Respondent and EPA.

3.7. The above provisions are STIPULATED and AGREED upon by Respondent and EPA Region 10.

IV. SANCTIONS

4.1. Notice is hereby given that violation of, or failure to comply with any of the provisions of this Order, may subject Respondent to (1) civil penalties of up to \$37,500 per day

of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); (2) administrative penalties of up to \$16,000 per day for each violation, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g); or (3) civil action in federal court for injunctive relief pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

4.2. Nothing in this Order shall be construed to relieve Respondent of applicable requirements of federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for violation of this Order or any other applicable requirements.

4.3. The undersigned representative of Respondent certifies that he is authorized to enter into the terms and conditions of this Order and to bind Respondent to this document.

STIPULATED and AGREED this 20th of May, 2019:

DATED:

FOR RESPONDENT:

May 20, 2019

Kenneth Whitney, Jr.
KENNETH WHITNEY, JR., Mayor
City of Troy

DATED:

FOR COMPLAINANT:

5/23/2019

Edward J. Kowalski
EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ADMINISTRATIVE ORDER ON CONSENT** in: **In the Matter of: City of Troy, Idaho, Docket No. CWA-10-2019-0060**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

William M. McLaren
U.S. Environmental Protection Agency
Region 10, M/S: 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101


Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

The Honorable Kenneth Whitney, Jr.
Mayor of the City of Troy
P.O. Box 595
519 South Main Street
Troy, ID 83871

Susan R. Wilson
Attorney at Law, PLLC
208 South Main Street, Suite 2
Moscow, ID 83843

5-28-2019

Dated



Teresa Young
Regional Hearing Clerk
EPA Region 10