

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and among the Missouri Attorney General's Office ("Attorney General"), the Missouri Department of Natural Resources ("Department"), and the City of Trenton ("Trenton"). This agreement is deemed to be executed on the date this document is signed and dated by the Department.

WHEREAS, Trenton is a third class municipality with a population of approximately 6,001 people. Trenton owns and operates a wastewater treatment plant (facility) for the biological treatment of domestic wastewater generated by residents and businesses. The facility includes i) a bar screen, grit removal, extended aeration, three secondary clarifiers, and belt filter press located in the NW  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , Section 27, Township 61 North, Range 24 West, ii) a two-cell lagoon system located in the NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$ , and SE  $\frac{1}{4}$ , NE  $\frac{1}{4}$  Section 28, Township 61 North, Range 24 West and SW  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , Section 27, Township 61 North, Range 24 West, iii) and a single cell lagoon system in the SW  $\frac{1}{4}$ , SW  $\frac{1}{4}$ , Section 8, Township 61 North, Range 24 West and the NW  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , Section 17, Township 61 North, Range 24 West, all in Grundy County, Missouri. The facility has a design population equivalent of 60,000, a design flow of 3 million gallons per day ("MGD"), and an actual average flow of 1.65 MGD. Effluent from the facility discharges through Outfall No. 001, to Muddy Creek pursuant to the conditions and requirements of

Missouri State Operating Permit (“Permit”) No. MO-0039748. The two-cell lagoon was previously permitted to discharge flow through Outfall #002. The single cell lagoon was previously permitted to discharge flow through Outfall #003.

WHEREAS, Muddy Creek and its tributaries are waters of the state as the term is defined by § 644.016(27) RSMo.

WHEREAS, domestic wastewater is a water contaminant as the term is defined in § 644.016(24) RSMo.

WHEREAS, the City has obtained previous operating permits that include enforceable conditions on discharges pursuant to 10 CSR 20-7.015 Effluent Regulations, which, prior to its revision, established a basis for limiting the discharges from the two-cell lagoon system through Outfalls #002 to 45 milligrams per liter of Biochemical Oxygen Demand (“BOD”) and Total Suspended Solids (“TSS”). Discharges from the single cell lagoon system through Outfall #003 were further limited to only being permitted during emergency conditions. Wastewater discharged from outfalls #002 and #003 receive primary treatment and the discharges are not continuous but are permitted as the result of certain wet weather conditions.

WHEREAS, a revision to 10 CSR 20-7.015 Effluent Regulations became effective on June 30, 2010. This rule revision eliminated the provision that provided a mechanism to place 45 milligrams per liter of BOD

and TSS limitations in National Pollutant Discharge Elimination System (“NPDES”) permits for discharges from Outfalls #002 and #003 because these discharges bypass secondary treatment, a requirement of the Clean Water Act. Federal regulations (40 CFR 122.41(m)(i)) define bypass as the “intentional diversion of waste streams from any portion of a treatment facility.” WHEREAS, on July 1, 2013, the Department reissued the City's Permit, #MO-0039748, and on July 26, 2013 (“Permit”), the City filed an appeal styled City of Trenton -Trenton Municipal Utilities v. Department of Natural Resources, Missouri Administrative Hearing Commission Case No. 13-0009 CWC (“Appeal”).

WHEREAS, to eliminate discharges from retention / treatment basins through Outfalls #002 and #003, the City will need to conduct an engineering evaluation followed by the construction of capital improvements. These efforts will require reasonable time and significant monetary investment.

WHEREAS, the Permit requires Trenton, at the frequencies specified therein, to sample the effluent discharged from Outfall No. 001 and analyze the sample for the water contaminants listed in Part “A”. The Permit requires the effluent to comply with the limitations contained in Part “A” and requires the results of the analysis to be submitted to the Department on

monthly Discharge Monitoring Reports (“DMRs”) by the 28<sup>th</sup> day of the following month.

WHEREAS, the Permit has interim and final effluent limitations for Ammonia as Nitrogen (“N”), and Escherichia (“E.”) coli, and a Schedule of Compliance (“SOC”) with 2 separate timeframes to complete improvements or upgrades. The Permit contains a deadline of December 31, 2013 for E. coli based on 10 CSR 20-7.015(9)(H)2. The SOC in the Permit requires facility upgrades designed to enable effluent to comply with final limitations for Ammonia as N by July 1, 2019.

WHEREAS, monthly DMRs submitted to the Department by Trenton document that the effluent discharged from outfall No. 001 failed to comply with permitted effluent limitations for E. coli during the months of April, May, June, July, August, September and October 2014.

WHEREAS, on September 16, 2013, representatives for Trenton and Department staff signed a Peak Flow Agreement for completing a Bypass Elimination Plan (“BEP”) for the facility within 365 days of the effective date of the Peak Flow Agreement. Trenton has not submitted a BEP and the Department hereby renders portions of the Peak Flow Agreement null and void pursuant to paragraph 14 thereof.

WHEREAS, this Agreement only addresses improvements necessary to comply with final effluent limitations of E. coli and bypasses of

wastewater that is routed through the retention basins and discharged through Outfalls #002 and #003 without meeting secondary treatment prior to discharge. The prohibition of bypass in this Agreement applies only to bypassed discharges, not to any internal future bypassing that occurs as a part of the process of "blending" that might be proposed by the City as part of a plan to eliminate bypasses from Outfalls #002 and #003.

WHEREAS, § 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 \$10,000.00 per day per violation.

WHEREAS, the Department alleges that Trenton failed to improve the facility as required in Part "A," Standard Conditions, and Part "E," Schedule of Compliance, of MSOP No. MO-0039748 and that the effluent discharged from outfall No. 001 failed to comply with the permitted effluent limitation for E. coli between April 1, 2014 and October 31, 2014 in violation of §§ 644.051.1(3) and 644.076.1 RSMo, 10 CSR 20-6.010(7)(A), and 10 CSR 20-7.015(4).

WHEREAS, The Department, the Attorney General and Trenton desire to amicably resolve all disputes or claims, which could be made against Trenton for the violations alleged, without Trenton admitting to the validity or accuracy of such claims.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration the Department, the Attorney General, and Trenton agree as follows:

1. The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto. Any changes in ownership or corporate status, including, but not limited to, any transfer of assets or real or personal property, shall not affect the responsibilities of Trenton under this Agreement.

2. Trenton, in compromise and satisfaction of the allegations or claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of \$5,000.

3. Trenton agrees to pay the \$5,000 civil penalty by check made payable to the "*State of Missouri (Grundy County)*" and mail it, along with the signed Settlement Agreement, to: Collections Specialist, Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

4. In the period of time from the effective date of this Agreement until the new facility or improvements to the existing facility are completed, Trenton agrees to operate and maintain the existing facility at all times in compliance with the interim effluent limitations, and all conditions and

requirements of the applicable Permit, except with respect to the effluent limitations for E. coli and bypassed discharges from Outfalls #002 and #003 in compliance with which is addressed herein. All units or components of the existing facility shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the facility.

5. The Department agrees to reference this Agreement in the Fact Sheet, documenting that the Department intends to allow blending if deemed an adequate treatment alternative by the Department and the City has committed to evaluate methods of sewer collection system rehabilitation as part of the BEP.

6. Trenton agrees to operate the collection system and treatment facility in such a manner as to ensure that the volume of effluent discharge through the main outfall (#001) is maximized, thereby minimizing bypass events through Outfalls #002 and #003. When Outfalls#002 and #003 are activated Trenton agrees to achieve the maximum practicable treatment such that bypassed effluent is of the highest quality achievable utilizing the existing facility.

7. Trenton agrees to the comply with the reporting requirements of 40 CFR 122.41(l)(6) and Department bypass reporting requirements for any discharges of effluent from Outfalls #002 and #003. The written report shall

include rainfall data (amount and duration) for the rainfall event that will identify the event as a wet weather discharge, in addition to the requirements of 40 CFR 122.41(l)(6).

8. On or before November 1, 2016, Trenton agrees to submit a BEP to the Department for review. The BEP shall be signed and sealed by a professional engineer licensed to practice in the state of Missouri and include but not be limited to:

a. Recommend interim operational changes, that can be implemented until the new system is operational, to reduce the E. coli levels in the effluent or discharges from the facility during the recreational season from April 1 to October 31.

b. Recommendation of improvements or upgrades that will enable the effluent to comply with the final effluent limitations contained in the MSOP for E. coli.

c. An evaluation of the existing facility and wastewater collection system.

d. A list of options evaluated to reduce peak flow and cost associated with these options.

e. A list and schedule for improvements designed to reduce peak flows to the Facility.

f. Information on the cost, financial capability, and financing schedule consistent with the financial capability and affordability of Trenton and its customers.

g. Posting of public warning signs at bypass outfalls.

h. A schedule that includes at least annual milestones and a final date to implement the requirements of the BEP as soon as practicable, but in no event later than:

i). July 1, 2019 to achieve compliance with final effluent limitations for E. coli and

ii). The timeline as established in the BEP, that will be subject to review by the Department, to eliminate bypasses from outfalls #002 and #003.

9. Trenton agrees to implement the schedule, as approved by the Department through review of the BEP, which shall be enforceable as a condition of compliance of this Agreement.

10. Trenton agrees to submit to the Department annual progress reports for Trenton's previous fiscal year, which starts on May 1 and ends on the following April 30. The reports are due October 30<sup>th</sup> of each year and the information provided shall include but not be limited to the status of implementation of all requirements of this Agreement, including a statement as to whether specific milestone dates in the schedules included in the BEP

were met and a summary of project expenditures. For work performed by a private contractor, Trenton shall submit certification by its engineer that the specified work has been completed and for work performed by Trenton personnel, a copy of the work order or similar documentation and cover letter certifying the work is complete signed by the design engineer. The reports shall also include any modifications to the BEP with supporting documentation for the changes.

11. Trenton agrees to maintain copies of all written submissions prepared pursuant to this Agreement for at least 36 months after termination of this Agreement.

12. Within 60 days of completing construction of improvements that are applicable, including but not limited to E. coli, and require a construction permit from the Department, Trenton agrees to submit to the Department a Statement of Work Completed Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project is complete and operable in accordance with Department approved plans and specifications.

13. If after the term of this Agreement and the timeline included in the BEP, bypasses continue to occur through Outfalls #002 and #003, Trenton may choose to submit a “no feasible alternatives analysis” to seek approval for future bypasses within its reissued NPDES permit.

14. Within 5 days of becoming aware that a deadline or milestone as set forth in this Agreement will not be completed by the required deadline, Trenton shall notify the Department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within 15 days of notifying the Department, Trenton shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department shall reply to Trenton within 15 days after receiving the written request from Trenton. The Department may grant a reasonable written request for an extension attributed to a force majeure event. "Force majeure," for purposes of this Agreement, is defined as "an act of God, war, strike, riot, or other catastrophe." Failure to submit a written notice to the Department may constitute a waiver of Trenton's right to request an extension and may be grounds for the Department to deny Trenton an extension.

15. Should Trenton fail to meet obligations by the deadlines set forth in this Agreement, Trenton shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a check made payable to the “*State of Missouri (Grundy County)*”. Any such stipulated penalty shall be paid within 10 days of demand by the Department and shall be delivered to: Collections Specialist, Attorney General’s Office, P.O. Box 899, Jefferson City, MO 65102-0899.

16. The terms stated herein 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 out in this Settlement Agreement. The terms of this Settlement Agreement supersede all previous memoranda of understanding, notes, conversations, and agreements whether express or implied. This agreement may not be modified orally.

17. This Agreement is independent of Trenton’s appeal of the Permit, Administrative Hearing Commission Case No. 13-0009 CWC, that is currently pending. The parties agree that it is appropriate for Trenton to maintain the appeal until such time as the Department completes the public notice process and issues Trenton another renewed permit (“new permit”). Within 30 days of issuance of the new permit, Trenton agrees to dismiss the pending appeal as moot. Trenton further agrees that the City will not appeal the renewed permit if the new permit is consistent with the expectations and comments provided by Trenton during the development of the permit. Each

party to this Agreement reserves the right to bring a judicial action to enforce its terms.

18. Pursuant to Section 644.145, the department prepared a Cost Analysis for Compliance, see Exhibit 1. The Cost Analysis for Compliance addresses Trenton's the requirement to prepare the Bypass Elimination Plan described in paragraph 8 of this Agreement. Trenton estimates the cost to develop the BEP is \$900,000.00. Based on the information obtained by the department the department finds that the cost to develop the BEP is affordable as defined in 644.145.3(1). The Cost Analysis for Compliance does not address future improvements that may be necessary to implement the recommendations contained in the BEP or future permit conditions.

19. Each signatory to this Agreement avers that he or she has the authority to bind his or her respective party to this Agreement as evidenced by his or her signature on this Agreement. Execution of this Agreement shall be completed when the Department has signed and dated the Agreement ("Effective Date"). As the last party signing the Agreement, the Department shall promptly distribute copies of the executed Agreement to the other signatories.

20. The terms of this Agreement supersede all previous memoranda of understanding, notes, conversations, and agreements expressed or implied, with respect to the subject matter addressed herein. This Agreement may not

be modified orally. To be effective, any modification of this Agreement must be in writing and executed by both parties or their authorized signatories.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as follows:

**MISSOURI DEPARTMENT OF  
NATURAL RESOURCES**

BY: John Madras  
**John Madras, Director  
Water Protection Program**

DATE: 9/13/16

**CITY OF TRENTON**

BY: Nick McHargue  
**Honorable Nick McHargue  
Mayor**

DATE: 8-22-2016

**CHRIS KOSTER  
Attorney General**

BY: Timothy P. Duggan  
**Timothy P. Duggan  
Assistant Attorney General**

DATE: 9/2/16