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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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HEARINGS CLERK
EPA--REGION 10

In the Matter of:)
) DOCKET NO. CWA-10-2010-0117
)
)
Elk City Water and Sewer Association)
Elk City, Idaho) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
Respondent.)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to CWA Section 309(g)(1) and (g)(2)(B), 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the Elk City Water and Sewer Association (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Part III of this CAFO contains a concise statement of the factual and legal bases for the alleged violations of the CWA.

III. ALLEGATIONS

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutants by any person” except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section 504(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).

3.2. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.3. Respondent owns and operates a wastewater treatment facility (“Facility”) located in Elk City, Idaho.

3.4. NPDES Permit ID-002201-2 (“Permit”) was issued to Respondent on August 15, 2002. The Permit became effective on October 1, 2002 and expired on September 30, 2007.

3.5. 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 45° 49.3’ North and longitude 115° 26.4’ West. Outfall 001 is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.6. The Facility discharges domestic wastewater containing pollutants into Big Elk Creek which flows into the South Fork Clearwater River and then into the Clearwater River. The creek and rivers are “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are “waters of the United States” within the meaning of 40 C.F.R. § 122.2.

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

3.8. Section II.B of the Permit requires Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (“DMR”).

3.9. Respondent’s DMRs from February 2005 to September 2007 indicate that the Facility had 1,181 violations of the effluent limitations set forth in the Permit. Exceedance of a monthly average effluent limit is counted as one violation for each day of the month in which the exceedance occurred. Exceedance of a weekly average effluent limit is counted as one violation for each day of the week in which the exceedance occurred. Exceedance of a daily maximum effluent limit is counted as one violation.

3.10. Section I.A. of the Permit contains an average monthly concentration effluent limit for BOD of 45 mg/L. Between February 2005 and September 2007, Respondent violated the average monthly concentration effluent limit for BOD five times, constituting 152 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2006	31
February 2006	28
October 2006	31
December 2006	31
January 2007	31

3.11. Section I.A of the Permit contains an average weekly concentration effluent limit for BOD of 65 mg/L. Between February 2005 and September 2007, Respondent violated the

average weekly concentration effluent limit for BOD seven times, constituting 49 violations.

The violations are as follows:

Month of Violation	Number of Violations
January 2006	7
October 2006	7
December 2006	7
January 2007	7
January 2007	7
February 2007	7
May 2007	7

3.12. Section I.A of the Permit contains an average monthly mass effluent limit for BOD of 45 lbs/day. Between February 2005 and September 2007, Respondent violated the average monthly mass effluent limit for BOD in the month of December 2006, constituting 31 violations.

3.13. Section I.A of the Permit contains an average weekly mass effluent limit for BOD of 65 lbs/day. Between February 2005 and September 2007, Respondent violated the average weekly mass effluent limit for BOD three times, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2006	7
February 2006	7
February 2007	7

3.14. Section I.A of the Permit contains a monthly average removal requirement for BOD under which the monthly average effluent concentration must not exceed 35% of the

monthly average influent concentration. Between February 2005 and September 2007, Respondent violated the monthly average removal requirement for BOD 12 times, constituting 366 violations. The violations are as follows:

Month of Violation	Number of Violations
April 2005	30
December 2005	31
January 2006	31
March 2006	31
April 2006	30
May 2006	31
June 2006	30
October 2006	31
December 2006	31
January 2007	31
February 2007	28
May 2007	31

3.15. Section I.A of the Permit contains an average weekly mass effluent limit for TSS of 105 lbs/day. Between February 2005 and September 2007, Respondent violated the average weekly mass effluent limit for TSS in the month of April 2007, constituting seven violations.

3.16. Section I.A of the Permit contains a monthly average removal requirement for TSS under which the monthly average effluent concentration must not exceed 35% of the monthly average influent concentration. Between February 2005 and September 2007, Respondent violated the monthly average removal requirement for TSS 11 times, constituting 337 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2005	31

Month of Violation	Number of Violations
April 2005	30
December 2005	31
January 2006	31
March 2006	31
May 2006	31
June 2006	30
October 2006	31
November 2006	30
January 2007	31
June 2007	30

3.17. Section I.A of the Permit contains an average monthly effluent limit for *E. coli* bacteria of 126 colonies/100 mL. Between February 2005 and September 2007, Respondent violated the average monthly effluent limit for *E. coli* bacteria in the month of February 2007, constituting 28 violations.

3.18. Section I.A of the Permit contains an instantaneous maximum limit for *E. coli* bacteria of 406 colonies/100 mL. Between February 2005 and September 2007, Respondent violated the instantaneous maximum limit for *E. coli* bacteria four times, constituting four violations.

Month of Violation	Number of Violations
December 2005	1
March 2006	1
November 2006	1
February 2007	1

3.19. Section I.A. of the Permit contains an average monthly concentration effluent limit for TRC of 0.5 mg/L. Between February 2005 and September 2007, Respondent violated

the average monthly concentration effluent limit for TRC five times, constituting 154 violations.

The violations are as follows:

Month of Violation	Number of Violations
October 2005	31
October 2006	31
November 2006	30
December 2006	31
May 2007	31

3.20. Section I.A. of the Permit contains an average weekly concentration effluent limit for TRC of 0.75 mg/L. Between February 2005 and September 2007, Respondent violated the average monthly concentration effluent limit for TRC six times, constituting 42 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2005	7
May 2005	7
October 2005	7
October 2006	7
November 2006	7
December 2006	7

3.21. Section I.A of the Permit requires a pH range of 6.5 – 9.0 standard units. Between February 2005 and September 2007, Respondent violated the pH limit eight times, constituting eight violations. The violations are as follows:

Month of Violation	Number of Violations
February 2005	1

Month of Violation	Number of Violations
April 2005	1
May 2005	1
February 2006	1
January 2007	1
February 2007	1
April 2007	1
June 2007	1

3.22. Respondent submitted an application for a new permit on December 4, 2007. EPA determined that the application was complete on December 20, 2007 and misstated that the permit was administratively extended. Respondent failed to apply for a new permit in a timely manner, however, 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.

3.23. From October 1, 2007 through January 31, 2010, Respondent has been discharging without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.24. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that "any person ... has violated section 1311 ... or has violated any permit condition or limitations ... in a permit issued" pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum amount of \$177,500.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$3,700.00. The penalty and interest will be paid in two installments of \$1,850 and \$1,906.

4.4. Respondent agrees to pay the first installment of the civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order. The second installment (which consists of a \$1,850 penalty and \$56 in interest) shall be paid within 13 months of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, MS ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Office of Compliance and Enforcement
Attn: David Domingo
U.S. Environmental Protection Agency
Region 10, MS ORC-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in accordance with the payment schedule set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent must pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of

Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

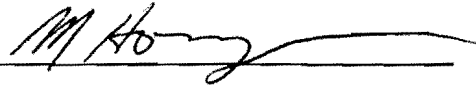
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

April 6, 2010

FOR RESPONDENT:



Signature

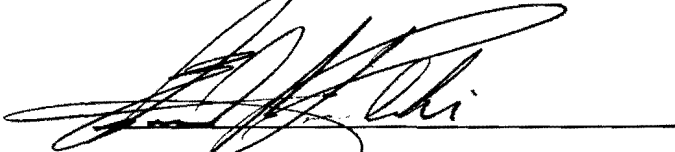
Print Name: MICHAEL M HOWZE

Title: CHAIRMAN

DATED:

4/26/2010

FOR COMPLAINANT:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these terms of settlement.

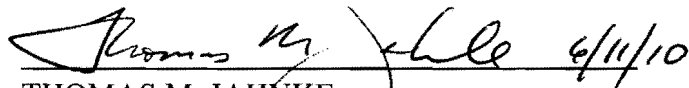
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 11th day of June, 2010.

 6/11/10

THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Elk City Water and Sewer Association**, **DOCKET NO.: CWA-10-2010-0117** was filed with the Regional Hearing Clerk on June 11, 2010.


On June 11, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Kim Owens, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on June 11, 2010, to:

Mike Howzen, President
Elk City Water and Sewer Association
P.O. Box 335
Elk City, Idaho 83525

DATED this day 11th of June 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10