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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2012-0008
)	
CITY OF WAPATO, WASHINGTON,)	
)	CONSENT AGREEMENT AND
Respondent.)	FINAL ORDER

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 Section 309(g)(1) and (g)(2)(B) of the CWA, 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 City of

Wapato, Washington (“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. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant 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 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.” Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, sewage, sewage sludge, biological materials, and industrial and municipal waste. “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. Respondent is a city duly organized and existing under the laws of Washington. Respondent is thus 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).

3.3. At all times relevant to this action, Respondent was the owner and/or operator of a wastewater treatment plant located at 68172 Highway 97 in Wapato, Washington (“Facility”).

3.4. The Facility, which was under Respondent’s control at all times relevant to this action, discharges domestic wastewater containing pollutants from Outfall 001 into Drainage Way No. 2. Outfall 001 is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.5. Drainage Way No. 2 flows into Wanity Slough which flows into the Yakima River. The Yakima River flows into the Columbia River. The Columbia River is an interstate water that is susceptible to use in interstate and foreign commerce. As such, the Columbia River is a “navigable water” as defined in CWA Section 502(7), 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 40 C.F.R. § 122.2. Therefore, the Yakima River, Wanity Slough and Drainage Way No. 2 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.

3.6. Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES Permit No. WA-005022-9 (“2005 Permit”). The 2005 Permit became effective on April 1, 2005 and expired on March 31, 2010.

3.7. On June 21, 2010, Respondent submitted a NPDES permit application for the Facility. Since Respondent did not submit a timely NPDES permit application, the 2005 Permit was not administratively extended.

3.8. On September 12, 2011, EPA issued a new NPDES permit (2011 Permit) to Respondent.

3.9. Section I.A. of the 2005 Permit established effluent limitations for the discharge from Outfall 001. These effluent limits include, but are not limited to, ammonia and pH.

3.10. Section II.B. of the 2005 Permit required Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (“DMR”). When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit each day of the month in which the exceedance occurred. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation.

3.11. Section I.A. of the 2005 Permit contained a seasonal monthly average concentration effluent limit for ammonia in discharges from the Facility of 1.2 mg/L from April 1 through October 31 of each year. Between February 2007 and March 2010, Respondent violated this limit a total of two (2) times, constituting 61 violations. The violations are as follows:

Month of Violation	Number of Violations
October 2009	31
November 2009	30

3.12. Section I.A. of the 2005 Permit contained a seasonal monthly average concentration effluent limit for ammonia in discharges from the Facility of 1.3 mg/L from November 1 through March 31 of each year. Between February 2007 and March 2010, Respondent violated this limit a total of four (4) times, constituting 121 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2009	31
January 2010	31
February 2010	28
March 2010	31

3.13. Section II.H of the 2005 Permit required Respondent to report to EPA all instances of noncompliance that were not required to be reported within 24 hours of noncompliance at the time the monthly DMR was submitted. Between February 2007 and March 2010, Respondent failed to submit reports of noncompliance for the monthly average effluent limit violations of ammonia alleged in Paragraphs 3.11 and 3.12, above. This constitutes six (6) violations of the Permit.

3.14. Section I.A. of the 2005 Permit contained a seasonal daily maximum concentration effluent limit for ammonia in discharges from the Facility of 2.5 mg/L between April 1 and October 31 of each year. Between February 2007 and March 2010, Respondent violated this limit on October 31, 2009, constituting one (1) violation.

3.15. Section I.A. of the 2005 Permit contained a seasonal daily maximum concentration effluent limit for ammonia in discharges from the Facility of 2.7 mg/L between November 1 and March 31 of each year. Between February 2007 and March 2010, Respondent violated this limit on November 30, 2009 and December 31, 2009, constituting two (2) violations.

3.16. Part II.G.1 of the 2005 Permit required Respondent to report any exceedance of a daily maximum effluent limit by telephone within 24 hours from the time Respondent became aware of the exceedance. Respondent failed to report an exceedance of the ammonia daily maximum effluent limit by telephone within 24 hours of the time Respondent became aware of

the exceedance in October 2009, November 2009, and December 2009, constituting three (3) violations.

3.17. Part II.G.2 of the 2005 Permit required Respondent to provide a written submission of any exceedance of a daily maximum effluent limit within five (5) business days of the time Respondent became aware of the exceedance. Respondent failed to submit a report of an exceedance of the ammonia daily maximum effluent limit within five (5) business days of the time Respondent became aware of the exceedance in October 2009, November 2009, and December 2009, constituting three (3) violations.

3.18. Section I.A. of the 2005 Permit contained an effluent limit for pH in discharges from the Facility of between 6.5 and 8.5 standard units. Between February 2007 and March 2010, Respondent violated this limit on July 31, 2008, constituting one (1) violation.

3.19. Section I.A.2 of the 2005 Permit required Respondent to monitor effluent three times during the first three years of the Permit for parameters listed in Appendix A of the Permit. Respondent failed to conduct the required monitoring once during the months of January, February, or March of the first year of the Permit and once during the months of April, May, or June of the second year of the Permit, constituting two (2) violations.

3.20. Section I.B.3 of the 2005 Permit required Respondent to submit an annual report of progress (“ARP”) that outlined the progress made towards achieving the final ammonia effluent limits in the 2005 Permit. ARPs were required to be submitted by February 1 of each year, with the first report due on October 1, 2005. Respondent failed to timely submit the ARPs due on February 1, 2007, February 1, 2008, and February 1, 2009. Respondent’s failure to timely submit the ARPs on these dates constitutes three (3) violations.

3.21. Part I.C of the 2005 Permit required Respondent to conduct whole effluent toxicity (“WET”) testing at four (4) specified times during the life of the 2005 Permit. The WET

testing results were required to be submitted 180 days prior to the expiration date of the 2005 Permit. Respondent failed to conduct one of the WET tests. In addition, Respondent failed to timely submit the WET testing results. This constitutes two (2) violations.

3.22. Part I.D of the 2005 Permit required Respondent to conduct surface water monitoring starting two (2) years after the 2005 Permit effective date and continuing for two (2) years. The surface water monitoring results were required to be submitted 180 days prior to the expiration date of the 2005 Permit. The 2005 Permit expired on March 31, 2010. Respondent did not submit the surface water monitoring results until July 13, 2010. Moreover, the surface water monitoring results failed to include data for total suspended solids. This constitutes two (2) violations.

3.23. Part IV.B of the 2005 Permit required Respondent to submit a new application for the discharge at least 180 days prior to the expiration date of the 2005 Permit if Respondent planned on continuing the regulated activity. The 2005 Permit expired on March 31, 2010 and Respondent did not submit a permit application until June 21, 2010. This constitutes one (1) violation.

3.24. From April 1, 2010 to September 12, 2011, Respondent discharged wastewater containing pollutants to Drainage Way No. 2 from the Facility without a NPDES permit.

3.25. Therefore, from April 1, 2010 to September 12, 2011, Respondent was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.26. 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 . . . of this title, or has violated any permit condition or limitation” in an NPDES permit. 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 \$11,000 per day for each violation that occurred on or after March 15, 2004 through January 12, 2009, and \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum 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 \$57,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days 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 via United States mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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 deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

Derek Schruhl
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also 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 shall 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 twenty percent (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, above, 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 fees and 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:

12-12-11

FOR CITY OF WAPATO, WASHINGTON:

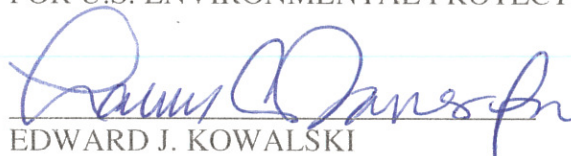


JESSE FARIAS
Mayor

DATED:

12-19-11

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



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 the terms of settlement.

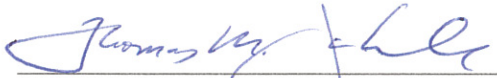
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 State of Washington Department of Ecology 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 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 6th day of February, 2012, 2011.



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: City of Wapato, DOCKET NO.: CWA-10-2012-0008** was filed with the Regional Hearing Clerk on February 6, 2012.

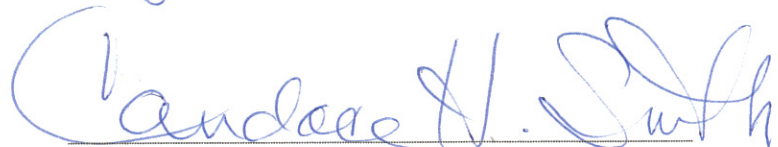
On February 6, 2012, the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Weber
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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 February 6, 2012, to:

Gary Potter
Public Works Director
City of Wapato
205 East Third Street
Wapato, WA 98951

DATED this 6 day of February 2012.



Candace H. Smith
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10