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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
) DOCKET NO. CWA-10-2014-0005  
)  
)  
CITY OF GENESEE, )  
Genesee, 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 (“the Act” or “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 Genesee (“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 (“Complainant”) has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty 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. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. CWA § 101(a), 33 U.S.C. § 1251(a).

3.2. Section 301(a) of the Act prohibits the "discharge of any pollutants by any person" except, inter alia, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

1.1.1. The Act defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12), 33 U.S.C. § 1362(7), (12).

1.1.2. The Act defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12), 33 U.S.C. § 1362(7), (12).

3.3. The Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“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. CWA § 402(a), 33 U.S.C. § 1342(a).

3.4. Respondent is a “municipality” organized under the laws of the State of Idaho, with jurisdiction over the disposal of sewage, industrial wastes, or other wastes, and is a “person” within the meaning of the Act. CWA § 502(4)-(5), 33 U.S.C. § 1362(4)-(5).

3.5. Respondent owns and operates the wastewater treatment plant (“Facility”) for the City of Genesee, which is a “POTW Treatment Plant.” 40 C.F.R. § 403.3(r).

3.6. At all times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-002012-5 (“Permit”). The Permit became effective on April 1, 2005 and expired on March 31, 2010. A permit application was received on December 4, 2009 and the Permit has been administratively extended pursuant to 40 C.F.R. § 122.6.

3.7. The Facility discharges pollutants from Outfall 001 into Cow Creek. Outfall 001 is a “point source.” 40 C.F.R. § 122.2.

3.8. Cow Creek flows into Union Flat Creek, which flows into the Palouse River, which flows into the Snake River, which flows into the Columbia River, which flows into the Pacific Ocean. Cow Creek is a tributary to an interstate water body that is subject to interstate commerce. As such, Cow Creek is a “navigable water,” and a “water of the United States.” CWA § 502(7), 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

3.9. Section I.A. of the Permit establishes effluent limits for the discharge from Outfall 001. These effluent limits include, but are not limited to, 5-day biochemical oxygen demand (“BOD<sub>5</sub>”), total suspended solids (“TSS”), *Escherichia coli* (“*E. coli*”), and acidity.

3.10. Section II.B.1 of the Permit requires Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (“DMR”).

3.11. Each failure to comply with the effluent limitations and monitoring requirements is a violation of the terms and conditions of the Permit, issued pursuant to Section 402 of the Act, and is a violation of Section 301(a) of the Act. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.12. Respondent's DMRs from December 2008 through March 2013 indicate that the Facility had 3,184 violations of the effluent limits set forth in the Permit. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation. When a permittee exceeds a weekly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the week in which the exceedance occurred. When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the month in which the exceedance occurred.

3.13. Section I.A.4, Table 1 and Section I.C of the Permit prohibit the discharge of pollutants from the Facility after April 30, 2008 in which the monthly average concentration of *E. coli* exceeds 126 colonies / 100 mL. Respondent violated this permit condition three times between January 2009 and March 2011, for 90 days of violation, as follows:

Month of Violation		Number of Violations
January	2009	31
February	2009	28
March	2011	31

3.14. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility after April 30, 2008 in which the concentration of *E. coli* exceeds 576 colonies / 100 mL in any single sample or analysis. Respondent violated this permit condition six times between January 2009 and June 2011, as follows:

Month of Violation		Number of Violations
January	2009	1
February	2009	1
March	2009	1
April	2010	1
March	2011	1
June	2011	1

3.15. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the mass of BOD<sub>5</sub> in the influent wastewater has not been reduced by at least 85%, on a monthly average basis, prior to discharge. Respondent violated this permit condition 23 times between December 2008 and March 2013, for 726 days of violation, as follows:

Month of Violation		Number of Violations
December	2008	31
January	2009	31
February	2009	28
March	2009	31
April	2009	30
May	2009	31
June	2009	30
March	2010	31
April	2010	30
June	2010	30
January	2011	31
February	2011	28
March	2011	31
April	2011	30
May	2011	31
June	2011	30
February	2012	29
March	2012	31
April	2012	30
May	2012	31

Month of Violation (cont'd)		Number of Violations
December	2012	31
January	2013	31
February	2013	28
March	2013	31

3.16. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the monthly average concentration of BOD<sub>5</sub> exceeds 30 mg/L. Respondent violated this permit condition 14 times between April 2009 and March 2013, for 423 days of violation, as follows:

Month of Violation		Number of Violations
April	2009	30
May	2009	31
March	2010	31
April	2010	30
June	2010	30
February	2011	28
April	2011	30
May	2011	31
June	2011	30
May	2012	31
December	2012	31
January	2013	31
February	2013	28
March	2013	31

3.17. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the monthly average mass of BOD<sub>5</sub> exceeds 38 lbs/day. Respondent violated this permit condition 15 times between April 2009 and March 2013, for 457 days of violation, as follows:

Month of Violation		Number of Violations
April	2009	30
May	2009	31
March	2010	31
April	2010	30
June	2010	30
January	2011	31
March	2011	31
April	2011	30
May	2011	31
April	2012	30
May	2012	31
December	2012	31
January	2013	31
February	2013	28
March	2013	31

3.18. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the weekly average concentration of BOD<sub>5</sub> exceeds 45 mg/L. Respondent violated this permit condition seven times between March 2010 and March 2013, for 49 days of violation, as follows:

Month of Violation		Number of Violations
March	2010	7
April	2010	7
June	2010	7
December	2012	7
January	2013	7
February	2013	7
March	2013	7

3.19. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the weekly average mass of BOD<sub>5</sub> exceeds 56 lbs/day. Respondent violated

this permit condition eight times between April 2009 and March 2013, for 56 days of violation, as follows:

Month of Violation		Number of Violations
April	2009	7
April	2010	7
June	2010	7
March	2011	7
May	2012	7
December	2012	7
February	2013	7
March	2013	7

3.20. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the mass of TSS in the influent wastewater has not been reduced by at least 65%, on a monthly average basis, prior to discharge. Respondent violated this permit condition 18 times between December 2008 and March 2013, for 544 days of violation, as follows:

Month of Violation		Number of Violations
December	2008	31
February	2009	28
March	2009	31
April	2009	30
May	2009	31
February	2010	28
March	2010	31
April	2010	30
June	2010	30
January	2011	31
March	2011	31
April	2011	30
May	2011	31



Month of Violation		Number of Violations
June	2011	30
May	2012	31
December	2012	31
February	2013	28
March	2013	31

3.21. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the monthly average concentration of TSS exceeds 45 mg/L. Respondent violated this permit condition 12 times between December 2008 and March 2013, for 363 days of violation, as follows:

Month of Violation		Number of Violations
December	2008	31
April	2009	30
February	2010	28
March	2010	31
April	2010	30
June	2010	30
May	2011	31
May	2012	31
December	2012	31
January	2013	31
February	2013	28
March	2013	31

3.22. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the monthly average mass of TSS exceeds 56 lbs/day. Respondent violated this permit condition twelve times between April 2009 and March 2013, for 363 days of violation, as follows:

Month of Violation		Number of Violations
April	2009	30
May	2009	31
February	2010	28
April	2010	30
June	2010	30
March	2011	31
May	2011	31
May	2012	31
December	2012	31
January	2013	31
February	2013	28
March	2013	31

3.23. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the weekly average concentration of TSS exceeds 65 mg/L. Respondent violated this permit condition six times between March 2010 and March 2013, for 49 days of violation, as follows:

Month of Violation		Number of Violations
March	2010	7
April	2010	7
June	2010	7
May	2011	7
December	2012	7
February	2013	7
March	2013	7

3.24. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility in which the average weekly mass of TSS exceeds 81 lbs/day. Respondent violated this permit condition eight times between April 2009 and March 2013, for 56 days of violation, as follows:

Month of Violation		Number of Violations
April	2009	7
February	2010	7
June	2010	7
March	2011	7
May	2011	7
May	2012	7
December	2012	7
March	2013	7

3.25. Section I.A.4, Table 1 of the Permit prohibits the discharge of pollutants from the Facility with a pH outside of the range of 6.5 to 9.0 standard units in any single sample or analysis. Respondent violated this permit condition in January 2012 and March 2013, for two days of violation.

#### **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 SEVENTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$17,700).

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

David Domingo  
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 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:

Nov 15<sup>th</sup> 2013

FOR RESPONDENT:

Steve Odenberg

Signature

Print Name: Steve Odenberg

Title: Mayor

DATED:

11/27/2013

FOR COMPLAINANT:

Edward J. Kowalski

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.

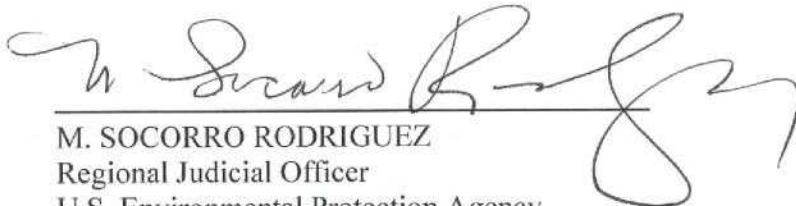
5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the

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 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 30<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
M. SOCORRO RODRIGUEZ  
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 Genesee POTW, Docket No. CWA-10-2014-0005**, was filed, and served as follows, on the signature date below.

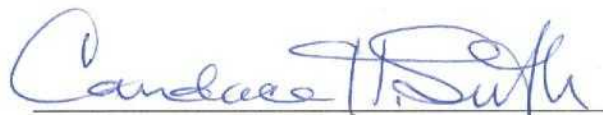
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Chris Bellovary  
U.S. Environmental Protection Agency  
Region 10, M/S: ORC-158  
1200 Sixth Avenue, Suite 900  
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:

Mayor Steve Odenborg  
Genesee City Hall  
P.O. Box 38  
Genesee, ID 83832

30 Dec 2013  
Dated

  
Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10