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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2013-0005
)	
City of Inkom, 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” or “Act”), 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 re delegated 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 Inkom (“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 Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.2 Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that 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.

3.3 Section 502(12) of the Act, 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). 40 C.F.R. § 122.2 defines “waters of the United States” to include waters that are currently used,

were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters.

3.4. Respondent is a municipality duly organized and existing under the laws of the State of Idaho. Respondent is thus a “person” under Act Section 502(5), 33 U.S.C. § 1362(5).

3.5 Respondent owns and/or operates a wastewater treatment plant (“Facility”) located in Inkom, Idaho.

3.6. At all times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility between October 1 and May 31 of each year pursuant to NPDES Permit No. ID-002024-9 (“Permit”). The Permit became effective on June 1, 2005 and expired on May 31, 2010. A permit application was received on May 12, 2010 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 Portneuf River. Outfall 001 is a “point source” as defined in 40 C.F.R. § 122.2.

3.8. The Portneuf River flows into the Snake River. The Snake River flows into the Columbia River, which flows into the Pacific Ocean. The Portneuf River is a tributary to an interstate water body that is subject to interstate commerce. As such, the Portneuf River is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 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, biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), *Escherichia coli* (“*E. coli*”), total residual chlorine (“TRC”), total inorganic nitrogen (“TIN”) and total phosphorus (“TP”). As provided in Section I.B.1 of the Permit, compliance with the effluent limits for TRC, TP, and TIN established in Section I.A was not required until December 2, 2009.

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

3.11. Respondent’s DMRs from November 2007 to May 2012 indicate that the Facility had 1,717 violations of the effluent limits set forth in the Permit. 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. 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 daily maximum effluent limit, the exceedance is counted as one violation.

3.12. Section I.A of the Permit contains a monthly average removal requirement for BOD of 85% in discharges from the Facility, under which the monthly average effluent concentration must not exceed 15% of the monthly average influent concentration. Between November 2007 and May 2012, Respondent violated this limit 5 times, constituting 154 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2008	31
December 2008	31
March 2009	31
May 2009	31
November 2010	30

3.13. Section I.A of the Permit contains an average monthly concentration effluent limit for BOD in discharges from the Facility of 30 mg/l. Between November 2007 and May 2012, Respondent violated this limit 7 times, constituting 213 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2008	31
December 2008	31
February 2009	28
March 2009	31
May 2009	31
November 2009	30
December 2009	31

3.14. Section I.A of the Permit contains an average monthly mass effluent limit for BOD in discharges from the Facility of 26 lbs/day. Between November 2007 and May 2012, Respondent violated this limit 2 times, constituting 62 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2008	31
March 2009	31

3.15. Section I.A of the Permit contains an average weekly concentration effluent limit for BOD in discharges from the Facility of 45 mg/l. Between November 2007 and May 2012, Respondent violated this limit 4 times, constituting 28 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2008	7
December 2008	7
March 2009	7
May 2009	7

3.16. Section I.A of the Permit contains an average weekly mass effluent limit for BOD in discharges from the Facility of 39 lbs/day. Between November 2007 and May 2012, Respondent violated this limit 2 times, constituting 14 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2008	7

Month of Violation	Number of Violations
March 2009	7

3.17. Section I.A of the Permit contains a monthly average removal requirement for TSS of 85% in discharges from the Facility, under which the monthly average effluent concentration must not exceed 15% of the monthly average influent concentration. Between November 2007 and May 2012, Respondent violated this limit 12 times, constituting 368 violations. The violations are as follows:

Month of Violation	Number of Violations
November 2007	30
December 2008	31
January 2009	31
May 2009	31
December 2009	31
January 2010	31
November 2010	30
December 2010	31
April 2011	30
May 2011	31
December 2011	31
April 2012	30

3.18. Section I.A of the Permit contains an average monthly concentration effluent limit for TSS in discharges from the Facility of 30 mg/l. Between November 2007 and May 2012, Respondent violated this limit a total of 3 times, constituting 90 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2008	29
December 2010	31
April 2012	30

3.19. Section I.A of the Permit contains an average weekly concentration effluent limit for TSS in discharges from the Facility of 45 mg/l. Between November 2007 and May 2012, Respondent violated this limit in April 2012, constituting 7 violations.

3.20. Section I.A of the Permit contains an average monthly effluent limit for *E. coli* in discharges from the Facility of 126 / 100 ml. Between November 2007 and May 2012, Respondent violated this limit a total of 5 times, constituting 150 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2009	31
January 2011	31
February 2011	28
March 2011	31
February 2012	29

3.21. Section I.A of the Permit contains an instantaneous maximum effluent limit for *E. coli* in discharges from the Facility of 576 / 100 ml. Between November 2007 and May 2012, Respondent violated this limit a total of 4 times, constituting 4 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2011	1
February 2011	1
March 2011	1
February 2012	1

3.22. Section I.A of the Permit contains an average monthly mass effluent limit for TRC in discharges from the Facility of 0.10 lbs/day, beginning December 2, 2009. Between December 2009 and May 2012, Respondent violated this limit 18 times, constituting 546 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2010	31
February 2010	28
April 2010	30
May 2010	31
October 2010	31
December 2010	31
January 2011	31
February 2011	28
March 2011	31
April 2011	30
May 2011	31
October 2011	31
November 2011	30
January 2012	31
February 2012	29
March 2012	31
April 2012	30
May 2012	31

3.23. Section I.A of the Permit contains a daily maximum mass effluent limit for TRC in discharges from the Facility of 0.20 lbs/day, beginning December 2, 2009. Between December 2009 and May 2012, Respondent violated this limit 4 times, constituting 4 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2010	1
December 2010	1
February 2011	1
March 2011	1

3.24. Section I.A of the Permit contains a daily maximum concentration effluent limit for TP in discharges from the Facility of 0.81 mg/l, beginning December 2, 2009. Between December 2009 and May 2012, Respondent violated this limit 22 times, constituting 22 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2009	1
January 2010	1
February 2010	1
March 2010	1
April 2010	1
May 2010	1
October 2010	1
November 2010	1
December 2010	1
January 2011	1
February 2011	1
March 2011	1
April 2011	1
May 2011	1
October 2011	1
November 2011	1
December 2011	1
January 2012	1
February 2012	1
March 2012	1
April 2012	1
May 2012	1

3.25. Section I.A of the Permit contains a daily maximum mass effluent limit for TP in discharges from the Facility of 0.71 lbs/day, beginning December 2, 2009. Between December

2009 and May 2012, Respondent violated this limit 22 times, constituting 22 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2009	1
January 2010	1
February 2010	1
March 2010	1
April 2010	1
May 2010	1
October 2010	1
November 2010	1
December 2010	1
January 2011	1
February 2011	1
March 2011	1
April 2011	1
May 2011	1
October 2011	1
November 2011	1
December 2011	1
January 2012	1
February 2012	1
March 2012	1
April 2012	1
May 2012	1

3.26. Section I.A of the Permit contains a daily maximum concentration effluent limit for TIN in discharges from the Facility of 0.44 mg/l, beginning December 2, 2009. Between December 2009 and May 2012, Respondent violated this limit 13 times, constituting 13 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2009	1
May 2010	1
October 2010	1
November 2010	1
December 2010	1
May 2011	1
October 2011	1
November 2011	1
December 2011	1
January 2012	1
March 2012	1
April 2012	1
May 2012	1

3.27. Section I.A of the Permit contains a daily maximum mass effluent limit for TIN in discharges from the Facility of 0.38 lbs/day, beginning December 2, 2009. Between December 2009 and May 2012, Respondent violated this limit 14 times, constituting 14 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2010	1
November 2010	1
December 2010	1
January 2011	1
February 2011	1
March 2011	1
April 2011	1
May 2011	1
October 2011	1
November 2011	1
December 2011	1
January 2012	1

Month of Violation	Number of Violations
April 2012	1
May 2012	1

3.28. Section I.A of the Permit contains an instantaneous effluent limit for pH in discharges from the Facility of a range from 6.5 to 9.0 standard units. Between February 2007 and May 2012, Respondent violated this limit 6 times, constituting 6 violations. The violations are as follows:

Month of Violation	Number of Violations
April 2008	1
May 2008	1
May 2009	1
April 2010	1
May 2010	1
May 2011	1

3.29. During the period from November 2007 through May 2012, Respondent discharged without permit authorization during the months of June through September, for each of those years. When a permittee discharges without permit authorization, the violation is counted as one violation for each day on which a discharge occurs. Respondent therefore discharged without a permit on 488 days, resulting in 488 violations of the CWA.

3.30. During the violations period set forth above, Respondent made good-faith efforts to attempt to fund and construct upgrades to its wastewater treatment plant.

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 \$28,160.

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 (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.

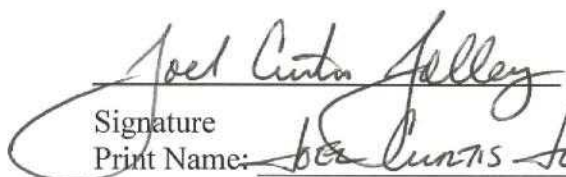
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

10/1/12

FOR RESPONDENT:


Signature
Print Name: Joel Curtis Solley
Title: Mayor - City of Inkorn

DATED:

10/4/2012

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 the terms of settlement.

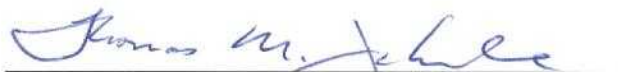
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 26th day of November, 2012.



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 the Matter of : City of Inkom, Idaho Docket No.: CWA-10-2013-0005** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

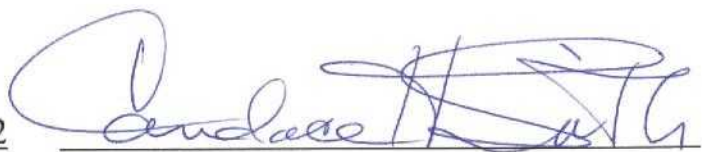
The undersigned certifies that a true and correct copy of the document was delivered to:

Mark A. Ryan
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 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 to:

Mayor Joel Jolley
P.O. Box 60
365 Rapid Creek Road
Inkom, ID 83245

DATED this 26th day of November, 2012



Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10