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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|-------------------------|---|------------------------------|
| In the Matter of: |) | |
| |) | DOCKET NO. CWA-10-2013-0010 |
| |) | |
| City of Franklin, 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 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 Franklin (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 CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States 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. 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.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. Respondent is the owner and operator of a wastewater treatment facility (Facility) located in Franklin, Idaho. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. Respondent is also a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

3.4. NPDES Permit ID-002556-9 (Permit) was issued to Respondent for the Facility and became effective June 1, 2004. The Permit expired on May 31, 2009. Respondent submitted a timely and complete application to renew the Permit and the Permit was administratively extended. EPA confirmed the administrative extension by letter dated June 11, 2010. The Permit is by the administrative extension effective and enforceable until a new permit is issued.

3.5. The Facility, which was under Respondent's control at all times relevant to this action, discharges domestic wastewater containing pollutants from Outfall 001 into Cub River. 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 wastewater flows on a seasonal basis from October to April to Outfall 001 into the Cub River.

3.7. Cub River is a "navigable water" as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

3.8. By discharging domestic wastewater containing pollutants from the Facility into waters of the United States, Respondent engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301(a) and 502(12) of the Act, 33 U.S.C. §§ 1311(a) and 1362(12).

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

3.10. 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 December 2007 to February 2012 indicate that the Facility had 1,237 violations of the effluent limits established 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 an instantaneous effluent limit is counted as one violation.

3.12. Section I.A.4 of the permit specifies that the average monthly percent removal of BOD in the influent shall be at least 85%. From April 2009 to June 2011, Respondent violated the monthly concentration effluent limit for BOD a total of 6 times, constituting 180 violations.

3.13. Section I.A.1 of the Permit specifies that the average monthly loading of BOD in the effluent shall not exceed 16 lbs/day. From March 2009 to June 2011, Respondent exceeded the average monthly loading limit for BOD 6 times, constituting 183 violations.

3.14. Section I.A.1 of the Permit specifies the average weekly loading of BOD in the effluent shall not exceed 23 lbs/day. From March 2009 to June 2011, Respondent exceeded the average weekly concentration limit for BOD a total of four times, constituting 28 violations.

3.15. Section I.A.1 of the Permit specifies that the average monthly concentration of BOD in the effluent shall not exceed 30 mg/l. From March 2009 to March 2011, Respondent exceeded the average monthly concentration limit for BOD 5 times, constituting 151 violations.

3.16. Section I.A.1. of the Permit specifies that the average weekly concentration for BOD in the effluent shall not exceed 45 mg/l. From April 2009 to March 2011, Respondent exceeded the average weekly concentration limit for BOD a total of 3 times, constituting 21 violations.

3.17. Section I.A.1. of the Permit specifies that the instantaneous maximum count of *E. coli* bacteria in the effluent from the Facility shall not exceed 576/100 ml. During April

2009, Respondent exceeded the instantaneous maximum effluent for *E. coli* bacteria 1 time, constituting 1 violation.

3.18. Section I.A of the Permit specifies that the monthly average count of *E. coli* bacteria in the effluent shall not exceed 126/100 ml. During March 2011, Respondent exceeded the monthly average count limit for *E. coli* bacteria 1 time, constituting 31 violations.

3.19. Section I.A.1. of the Permit specifies that the maximum daily loading of TRC in the effluent shall not exceed 0.07 lbs/day. From December 2007 to February 2012, Respondent exceeded the maximum daily loading for TRC 4 times, constituting 4 violations.

3.20. Section I.A.1. of the Permit specifies that the average monthly loading of TRC in the effluent shall not exceed 0.05 lbs/day. From April 2009 to June 2011, Respondent exceeded the average monthly loading limit for TRC 2 times, constituting 60 violations,

3.21. Section I.A.1. of the Permit specifies that the maximum daily concentration of TRC in the effluent shall not exceed 0.1 mg/l. During December 2007, Respondent exceeded the maximum daily concentration limit for TRC 1 time, constituting 1 violation.

3.22. Section I.A.1. of the Permit specifies that the average monthly percent removal of TSS in the influent shall be at least 85%. From April 2009 to June 2011, Respondent failed to meet the 85% average monthly percent removal of TSS 6 times, constituting 180 violations.

3.23. Section I.A.1. of the Permit specifies that the average monthly loading of TSS in the effluent shall not exceed 16 lbs/day. From January 2009 to June 2011, Respondent exceeded the average monthly loading limit for TSS 7 times, constituting 213 violations.

3.24. Section I.A.1. of the Permit specifies that the average weekly loading of TSS in the effluent shall not exceed 23 lbs/day. From January 2009 to June 2011, Respondent exceeded the average weekly loading limit for TSS 4 times, constituting 28 violations.

3.25. Section 1.A.1. of the Permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 30 mg/l. From April 2009 to June 2011, Respondent exceeded the average monthly concentration limit for TSS 5 times, constituting 149 violations.

3.26. Section 1.A.1. of the Permit specifies that the average weekly concentration of TSS in the effluent shall not exceed 45 mg/l. During April 2009, Respondent exceeded the average weekly concentration limit for TSS 1 time, constituting 7 violations.

3.27. Under Section 309(g) of the Act, 33 U.S.C § 1319(g), EPA may assess an administrative penalty when EPA finds that any person has violated section any permit condition or permit limitation in a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator may assess a Class I or Class II civil penalty.

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 **\$ 10,500**.

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, Missouri 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, Washington 98101

Office of Compliance and Enforcement
Attn: Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, Washington 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:

2/1/2013

FOR RESPONDENT:



Signature

Print Name: J. Todd Hawkes

Title: Mayor Franklin City

DATED:

2/19/2013

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.

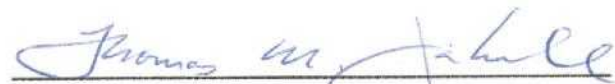
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 17th day of April, ~~2012.~~ ²⁰¹³ June



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 FRANKLIN, Docket No.: CWA-10-2013-0010**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

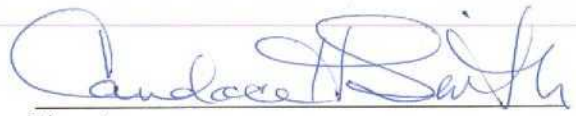
The undersigned certifies that a true and correct copy of the document was delivered to:

Mary Stroh Queitzsch
Office of Regional Counsel
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:

The Honorable Todd Hawkes
Mayor of Franklin
P.O. Box 69
128 East Main Street
Franklin, Idaho 83237

DATED this 17th day of April, 2013


Signature

Regional Hearing Clerk
EPA Region 10

