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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2014-0024
)	
City of Troy)	CONSENT AGREEMENT AND
Idaho)	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 Sections 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 Troy ("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 a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. Respondent is the owner and/or operator of a wastewater treatment plant (Facility) located in Troy, Idaho.

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

3.5. NPDES Permit ID-002360-4 (WWTP Permit) was issued to Respondent on March 5, 2004. The WWTP Permit became effective on May 1, 2004 and was set to expire on April 30, 2009. Respondent did not submit a timely and complete application to renew the Permit and the Permit expired April 30, 2009.

3.6. 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 46° 43’ 53” North and longitude 116° 45’ 22” West, into the West Fork Little Bear Creek. Outfall 001 is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.7. The Facility discharges domestic wastewater containing pollutants into West Fork Little Bear Creek which flows into the Potlatch River then to the Clearwater River and then into the Snake River. The West Fork Little Bear Creek is protected by the State of Idaho for cold water communities, salmonid spawning, and secondary contact recreation. The West Fork Little Bear Creek and the Potlatch, Clearwater and Snake Rivers are “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are “waters 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 a “discharge of pollutants” from a point source within the meaning of Sections 302(a) and 502(12) of the Act, 33 U.S.C. §§ 1311(a) and 1362(12).

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

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

3.11. Respondent's DMRs from October 2008 to April 2009 indicate that the Facility had 67 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.

3.12. Section I.A of the Permit contains an instantaneous maximum limit for *E. coli* bacteria of 406 colonies/100 mL. Between October 2008 and April 2009, Respondent violated the instantaneous maximum limit for *E. coli* bacteria 3 times, constituting 3 violations.

Month of Violation	Number of Violations
October 2008	1
January 2009	1
March 2009	1

3.13. Section I.A. of the Permit contains an average monthly concentration effluent limit for TRC of 0.10 mg/L. Between October 2008 and April 2009, Respondent violated the average monthly concentration effluent limit for TRC 1 time, constituting 31 violations.

Month of Violation	Number of Violations
March 2009	31

3.14. Section I.A. of the Permit contains a daily maximum concentration effluent limit for TRC of 0.10 mg/L. Between October 2008 and April 2009, Respondent violated the average monthly concentration effluent limit for TRC 1 time, constituting 1 violation.

Month of Violation	Number of Violations
March 2009	1

3.15. Section I.A. of the Permit contains an average monthly mass effluent limit for TRC of 0.20 lbs/day. Between October 2008 and April 2009, Respondent violated the average monthly concentration effluent limit for TRC 1 time, constituting 31 violations.

Month of Violation	Number of Violations
March 2009	31

3.16. Section I.A. of the Permit contains a daily maximum mass effluent limit for TRC of 0.20 lbs/day. Between October 2008 and April 2009, Respondent violated the average monthly concentration effluent limit for TRC 1 time, constituting 1 violation.

Month of Violation	Number of Violations
March 2009	1

3.17. Respondent failed to apply for a new permit in a timely manner 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.

3.18. As of May 1, 2009, beginning on the day after Respondent's Permit expired, Respondent has been discharging without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge without a permit is considered a violation under the CWA. From May 1, 2009 to the end of August 2013, Respondent violated the CWA for 52 months by discharging effluent into waters of the U.S. without a permit. Of those unpermitted discharges, 960 exceeded the effluent limits of the expired NPDES permit.

3.19. Under Section 309(g) of the Act, 33 U.S.C § 1319(g), whenever on the basis of any information the Administrator finds that any person has violated any permit condition or permit limitation in a permit issued under 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 fourteen thousand five hundred dollars (\$ 14,500).

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, 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

U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Attn: Stacey Erickson

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.

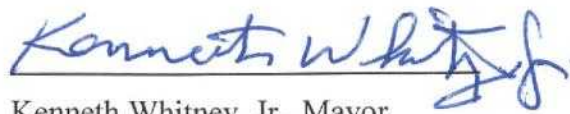
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

FOR RESPONDENT:

1-28-2014



Kenneth Whitney, Jr., Mayor
City of Troy

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

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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 13th day of March, 2014.



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 Troy, Docket No. CWA-10-2014-0024**, 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:

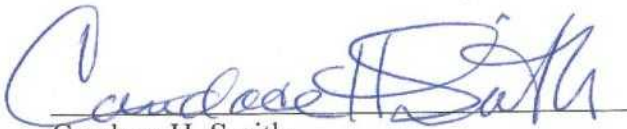
Mary Stroh Queitzsch
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

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

The Honorable Kenneth Whitney, Jr.
Mayor of the City of Troy
P.O. Box 595
519 South Main Street
Troy, Idaho 83871

Susan R. Wilson
Attorney at Law, PLLC
208 South Main Street, Ste 2
Moscow, Idaho 83843

3-14-14
Dated


Candace H. Smith
Regional Hearing Clerk
EPA Region 10