

Regional Hearing Clerk - Daily Duties

COMPLAINT

The complaint is the initial document filed with the RHC when a case is initiated and this when a file is started and the case name/docket number added to the RHC's tracking system. The case name, statute and docket number is e-mailed to Anthea Walker, Records Management for creation of file folder. The files are color coded as follows:

Clean Water Act (CWA) - Class I - under \$32,500	Lavender folder
Clean Water Act (CWA) - Class II - over \$32,500	Red folder
Clean Water Act (CWA) - Class I (NPDES)	Pink folder
Toxic Substances Control Act (TSCA)	Orange folder
Clean Air Act (CAA)	Manilla folder
Emergency Preparedness & Community Right-to-Know Act (EPCRA)	Yellow folder
Federal Insecticide, Fungicide & Rodenticide Act (FIFRA)	Green folder
Resource Conservation & Recovery Act (RCRA) (3008(h))	White folder
Resource Conservation & Recovery Act (RCRA) (3008(a)(1))	Gold folder
Resource Conservation & Recovery Act - Underground Storage Tank (RCRA-UST)	Gray folder
Underground Injection Control (UIC)	Manilla folder
Safe Drinking Water Act (SDWA)	Blue folder
*Resource Conservation * Recovery Act (RCRA) (7003)	White folder
*Resource Conservation * Recovery Act (RCRA) (3013)	White folder
National Pollutant & Discharge Elimination System (NPDES)	Pink folder
Spill Prevention Control & Countermeasures (SPCC)	Blue folder
Oil Pollution Act (OPA)	White folder

ANSWER

After complaint is filed, the answer from respondent should be received by RHC within time specified in complaint (20 days). The answer can be in the form of an official legal response from respondent's attorney if legal counsel has been obtained or a letter directly from respondent. After the answer is received, RHC prepares a request for an Administrative Law Judge (ALJ) or Regional Judicial Officer (RJO) to be appointed. These are "form" documents and are on a disk. All documents within the file are forwarded to the ALJ or RJO by RHC. A copy of the designation letter should be mailed to the parties listed on the Certificate of Service. Orders mailed out or received by the RHC should be file stamped before processing. The ALJ is assigned to all administrative cases except for CWA Class I, RCRA 3008(h), SDWA and UIC cases. The Presiding Officer for Region 4 is Susan Schub.

*There are very few RCRA 7003 and 3013 cases on file.

FILE CLOCK

The RHC should periodically check the clock to insure the time is correctly set. The first of each month the clock needs to be manually changed to maintain accuracy. Remember to also change during the daylight savings time period. No one is allowed to file documents after the 4:30 deadline and if this happens documents should be re-filed for the following day. The RHC should remain neutral when processing administrative orders and ensure both sides are treated equally.

REQUEST FOR EXTENSION OF TIME

Respondents will often file a Request for Extension of Time to Answer. Upon receipt, the RHC should check the Certificate of Service from respondent to make sure a copy has been filed on the EPA attorney. The EPA attorney and/or the respondent are responsible for drafting an Order for the RJO to sign either granting or denying the request. (The RJO signs any Motions made prior to the ALJ being assigned to a case. The RHC is responsible for mailing any Motions/Orders signed by the RJO.)

SCHEDULING ORDER

After an ALJ or RJO has been assigned, the Scheduling Order is the next document the RHC receives. This document outlines the time frames the ALJ or RJO has designated for various filings/events such as due dates for status reports, conference calls, pre-hearing exchange, etc. Some judges will go ahead and specify a date for the hearing which, if indicated in this Order will be several months away. A note should always be made to follow up on this at a later date but at least a couple of months ahead of time. The ALJ will usually (but not always) issue another specific Order at a later date instructing the RHC to make the hearing arrangements. Monthly case updates are distributed among certain management staff from RHC's database system indicating significant events taking place during the current month.

STATUS REPORTS AND VARIOUS OTHER MOTIONS AND PLEADINGS

After the Scheduling Order has been received, various other documents will then be filed by the complainant and respondent in accordance with the dates set out in the Judge's Order until the case either goes to hearing or is settled by informal negotiations/ADR. These documents need only be checked by the RHC for completeness, original signatures and to make sure a Certificate of Service is attached.

TRANSCRIPTS

When a case goes to hearing the court reporting service will send the original and two copies of the Transcript to the RHC. The original is filed in the case file and a copy sent to the ALJ/RJO and the EPA attorney, with a notice to the respondent that the transcript is available. The respondent is responsible for obtaining a copy of the transcript from the court reporter at their own expense. Occasionally the respondent will contact the RHC to request a copy; this can be provided at a charge of 15 cents/page.

DECISIONS/FINAL ORDERS

After the ALJ/RJO renders a Decision or Final Order, the RHC will receive copies with instructions for service on the parties. Usually the ALJ's assistant will send copies of these Orders to the Environmental Appeals Board (EAB) as a courtesy but the RHC should make sure the EAB received these documents. All Orders signed by the RJO are mailed by the RHC as stated above. These Orders should be sent to the EAB as soon as possible in anticipation that the respondent may Appeal the decision once received. In this event, the Clerk of the Board, Eurika Durr, will send the RHC an e-mail or courtesy call with instructions on sending the entire file to Headquarters. Before sending the file, the RHC should index the entire file, copy and forward the original along with the index via Federal Express to the EAB.

CONSENT AGREEMENT/ORDERS

When a CAFO is filed, the RHC should check to make sure there is a Certificate of Service and that all parties have been served, including the ALJ/RJO if one was assigned. The RJO signs off on the majority of the CAFOs except the RCRA and the Spill Prevention Control & Countermeasures cases (SPCC) which are signed by the Regional Administrator (RA) but are still mailed out by the RHC. CAFOs designated for RJO's signature should be placed in the "CAFO's In" box located on the outside of the RHC's cubicle by the attorney or program person. Envelopes, green cards and labels should be enclosed with the Order fully completed and in tracking system. The RHC should check to make sure there is a Certificate of Service attached for signature and all parties are served once signed and ready for mailing. An Accounts Receivable Form should also be included fully filled out and ready for processing by Finance. RHC is responsible for sending the Finance Office their copies by interoffice mail also. The Headquarters RHC should be sent two copies of all CAFOs to be put on the Regional web page for public viewing. The penalty assessed information and due date for payment should then be entered into the tracking system. After the RHC has received notification of final payment from finance, the case can be closed and pulled from the active files shelf and placed on the closed file shelf. On a monthly basis, the RHC gives Priscilla Johnson, for docketing purposes a list of closed cases from the tracking system.

NOTE: The RHC is responsible for checking to make sure there is a signed and dated Certificate of Service with all documents filed. If complainant fails to provide a Certificate of Service, the RHC should call the omission to the attention of the EPA attorney. If a document filed by a respondent does not contain a Certificate of Service, the RHC should check with the ALJ/RJO and EPA attorney to ensure they received a copy. If not, the RHC should contact the respondent to inform them that they need to send copies of all documents filed to all the parties. The RHC receives the ORIGINAL and one copy of all documents with ORIGINAL SIGNATURES beginning with the Complaint. All documents should be date stamped immediately upon receipt as many of the documents (especially status reports) are generally filed on the date due. The cut-off time each day for filings should be 4:30 p.m.

Respondents will frequently call and ask if a filing can be by fax. This is OK as long as it is followed up with a hard copy thru the mail.

VIEWING FILES/OUTSIDE FILING

When anyone needs to view administrative files, they first must contact the RHC to arrange time and place. Outside clients needing to file Orders should always make prior arrangements through the RHC before sending a Carrier to file documents. No files are accepted after 4:30 p.m. as stated above.

HEARINGS

When a hearing is scheduled by the ALJ or RJO arrangements should be made AT LEAST 30 days before the hearing date. The ALJ or RJO will designate the city/state where the hearing is to be held; the RHC then calls the court systems in that city to find and reserve suitable hearing space. A confirmation letter should be sent immediately via Certified Mail to the contact person the reservation is made with. (Examples are in the RHC Reading File notebook.) A Notice of Hearing Location is then sent to the parties (hand-carried to the EPA attorney and sent certified mail to the respondent). The RHC also prepares a Procurement Request for a Court Reporter. (Examples are in the notebook titled "PR's for Court Reporters.") The accounting information to be used comes from the Program office where the case originated – for example, a CAA case would have APTMD accounting information obtained from the Administrative Officer in that Division. The RHC should fill in the "Suggested Source" line on the PR if such information is available from previous hearing in the City designated. The RHC does NOT contract the court reporting service personally, this is done by staff in the Purchasing Department and a copy of the contract is then forwarded to the RHC. The RHC should ALWAYS call the courtroom contact and the court reporting service 3-4 days before the hearing to make sure that everything is in order for the hearing. At this point, the RHC should make sure the case file is complete with all filings up-to-date in case the ALJ/EPA attorney/respondent request a copy of any documents. They have their own copy of everything but occasionally may have misplaced a particular document they need. When the transcript is received, the RHC immediately files the original and transmits copies as noted above. Whenever hearings are held in Georgia, the RHC should attend if possible to assist judge.

In most cases, the parties will settle just before the hearing in which case the RHC calls the courtroom contact person and court reporting service to cancel. An e-mail should also be sent to the person in Purchasing who prepared the court reporting contract to let them know the hearing has been cancelled.

TRACKING SYSTEM

The RHC maintains a tracking system in DBtextworks of administrative cases filed that displays certain information ie., penalties assessed, filing dates, hearing dates, CAFO dates, attorney/supervisor name etc. The Office of Financial Management submits a Collections of Funds form to the RHC indicating penalties paid and dates received. At this point, cases can officially be closed in the tracking system if penalties are paid in full. The respondent may or may not notify the RHC that payment has been made.

Occasionally a respondent will mail a check directly to the RHC. When this happens, the check should be hand-carried to the Office of Financial Management where it will be entered on a "Record of Public Funds Received" form which will be signed by the person accepting the check. The RHC should always place a copy of this form in the case file as verification that the check was delivered to the Finance Office.

RECORDS RETENTION

The RHC should periodically box closed files (follow retention schedule), type inventory forms and notify the Records Management staff that files are ready to be archived. Examples of inventory forms and retention information are located in the OEA Records Management file room.

MISCELLANEOUS

The RHC does 25% of FOIA requests and other verbal and/or written requests and inquiries from the public, outside attorneys and other entities etc., regarding status of cases and other general or legal information. The RHC also provides assistance to the Regional Judicial Officer with Ethics matters (Financial Disclosure Forms) which involve copying and distribution of forms to designated OEA staff, tracking of training information, verifying that data is correct and other duties as assigned by Ethics Manager. Notarize legal documents when needed. Periodically take notes at monthly conference calls with other RHC's every third Tuesday. Serve on workgroups when appointed. Attend yearly RHC's conferences.

REGIONAL HEARING CLERK (RHC) PROCEDURES
Patricia Bullock, 13th Floor
Office of Legal Support

These procedures have been established to ensure that the RHC has consistent and impartial procedures for handling administrative penalty cases. The following RHC procedures are effective immediately and apply to all administrative penalty cases. The RHC is a neutral position which serves both Agency and non-Agency parties. General rules governing administrative penalty cases are set forth in 40 C.F.R. Part 22.

OFFICE HOURS:

7:00 a.m. to 4:30 p.m., daily, excluding weekends and federal holidays

GUIDELINES

Prior to filing any documents, make sure you completely understand the following procedures and have made all necessary preparations (copies, cover letter, attachments, proper signatures, certificate of service, envelopes, etc.).

It is **VERY IMPORTANT** that you are ready to place pleading documents in the mail on the same day they are filed with the RHC. *The date of mailing should always be the same as the date on the Certificate of Service.*

Unless subject to other requirements below, filing is intended to be self-service and is not contingent on the availability of the RHC. In situations where assistance is needed and the RHC is unavailable, please see an EAD legal Clerk or the RHC backup. However, nothing can be filed stamped after 4:30pm.

Any documents stamp filed after close of business(4:30pm) or placed in the RHC's wooden in-box after close of business will be filed and RE-STAMPED by the RHC on the following business day. *(The RHC will notify the parties whenever this action is taken.)*

Please be advised, at time of filing, the original and one copy (as described below) should be left in the RHC's wooden in-box and may not be altered or removed from the RHC's office once filed. Once filed, you must follow formal procedures to amend the document.

VIEWING CASE FILES:

You must call the RHC to schedule a time to view case file(s) in advance. Appointments are usually set within 24 hours or less, depending on the number of files required. Scheduling will allow the RHC to accommodate adequate seating arrangements in a more desirable location if the Record Center viewing area is unavailable and also allows the RHC to pull all necessary files to be available at the scheduled viewing time.

Please note, Agency staff have no more accessibility to RHC files than non-Agency requesters. Therefore, appointments can only be set during RHC office hours. The RHC will send a notice via voice mail when a room is confirmed. If other problems occur, the RHC will contact the requestor ASAP to provide an update on the status of the request.

Please provide the RHC with the following information so your request can be addressed quickly:

- **Name of case**
- **Filing date** (*not necessary, but helpful*)
- **Docket number**
- **Name of document**
- **Date of document** (*not necessary, but helpful*)
- **Requestor's name, phone, & division/office mailcode**

Filing Administrative Complaints:

- ✓ *Docket Clerks should insure that their docket system exemplifies the following:*

Statute-Region-Fiscal Year-Case Number Identifier

EXAMPLE

TSCA-4-2001-001

REMEMBER: Docket numbers are assigned before the complaint is filed through the appropriate program clerk. Docket Clerks should assign new numbers and change current fiscal year as indicated above on October 1st of each year .

- ✓ *All green cards should be forwarded back to RHC for filing with original complaint upon return, program should make copies of green cards for their files;*
- ✓ *File stamp the top page of the Complaint and Certificate of Service; and*
- ✓ *Leave the original and one (1) copy of the signed Administrative Complaint in the wooden in-box (including a copy of the Certificate of Service, cover letter for each Respondent, and any other document(s) that should be attached).*

Filing Requests for Extensions of Time to File an Answer:

The Respondent will be the party to file Requests for Extensions of Time to Answer. These procedures are provided for your information. If asked, the RHC or Attorney should refer Respondents to 40 C.F.R. Part 22 for the guidelines and the rules below should be followed.

- ✓ ***When an EAD attorney receives from the Respondent a Motion for Extension of Time to File an Answer, and the EAD attorney does not oppose the extension, the EAD attorney should draft a proposed order granting the extension. The proposed order should then be placed in the appropriate box for the RHC, who will review it and forward to the RJO for signature;***
- ✓ ***Proposed Orders should be placed in the plastic in-box labeled "Extension of Time to Answer" hanging on right entrance wall of RHC office;***
- ✓ ***Attach a signature tab where RJO should sign along with space for date;***
- ✓ ***RHC will call appropriate party for pick up upon return from RJO;***
- ✓ ***Folder will be placed back in the plastic in-box for pick up.***

Filing Pre-hearing Exchanges, Motions, Orders, Status Reports, Supplementals, etc.:

- ✓ ***When filing by carrier, respondents or outside customers should call RHC to arrange a time for filing administrative documents, if RHC or backup isn't available, follow the instructions below;***
- ✓ ***File stamp the top page of the order to be filed and make any copies for the respondent with the file stamp if requested;***
- ✓ ***Leave the original and one copy of the document to be filed in the wooden in-box (including a copy of the Certificate of Service, cover letter(s), and any other document(s) that should be attached).***
- ✓ ***Remember to file stamp the cover page of the actual order, not just the cover letter (file stamp the original and (one) copy of each document filed. All orders must have a file stamp date).***

Submitting CAFOs for RJO's Signature:

- ✓ ***Leave folder with original CAFO and any background material in the plastic in-box labeled "CAFOs In" hanging on right entrance wall of RHC office;***
- ✓ ***Ensure that all signed documents are dated***
- ✓ ***Attach a signature tab where RJO should sign along with space for date;***
- ✓ ***RHC will place a copy in inter office mail upon completion of mailing; or***
- ✓ ***For those who would rather pick up order via routing package , RHC will call and document will be placed in the plastic in-box labeled "CAFOs Out."***

Open/Close CAFOs

- ✓ *Under the new provision of 40 CFR 22.13(b) all cases that are settled prior to filing a Complaint can settle without one;*
- ✓ *Individual preparing CAFO(program or EAD attorney) must indicate this document falls under this new rule by placing the letter (b) behind the docket number, example: EPCRA-04-2000-010(b).*

WHAT'S EXPECTED IN ...

→ CERTIFICATE OF SERVICE

- ▶ *The name of the person who filed the document with the RHC;*
- ▶ *The names and addresses of the persons to whom a copy of the document was mailed; and,*
- ▶ *The date of mailing.*

The Certificate of Service's address list should always include the Presiding Officer and the Respondent or the Respondent's Counsel. Questions about the form or specific language to be used should be directed to the case attorney.

The goal is to file the document with the RHC and mail all of the distribution copies on the same day. This is easiest if the envelopes and all of the distribution copies of the document are prepared before going to the RHC's office.

See Attached Sample

→ A COMPLAINT COVER LETTER TO THE RESPONDENT:

- ▶ *EPA attorney's name and phone number;*
- ▶ *EPA program person's name and phone number;*
- ▶ *Docket number;*
- ▶ *Reference to the Consolidated Rules of Practice, 40 C.F.R. Part 22, for guidance on Administrative procedure; and,*
- ▶ *Request that Respondent include docket number on all documents.*

→ THE CAFO COVER LETTER: *

****Single payment (See Attached Letter #1)**

- ▶ *Date CAFO was filed;*
- ▶ *Docket number;*
- ▶ *Billing document number; and,*
- ▶ *Due date of payment.*

****Installment payment (See Attached Letter #2)**

- ▶ *Date CAFO was filed;*
- ▶ *Docket number;*
- ▶ *Total amount of penalty;*
- ▶ *Number of installment payments; and,*
- ▶ *Date payments are due.*

****Complaint/CAFO payment (See Attached Letter #3)**

- ▶ *Refer to all of the above*

*** The attached letters are samples only. Feel free to edit to fit your case.**

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Receipt #: _____

(Your Mail Code)

Re: (Company Name)
Docket No. _____

Dear _____ :

Enclosed please find an original signed fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. An original was filed with the Regional Hearing Clerk (RHC) on {file date}.

Please pay the civil penalty in the amount of \$ _____ in the manner prescribed in paragraphs(s) _____ of the CAFO. Please reference your check with the docket number _____. Pursuant to paragraph _____ of the CAFO, your payment is due on {due date}.

Thank you for your cooperation in resolving this matter.

Sincerely,

(Name)

(Title)

(Section)

Enclosure

cc: Patricia A. Bullock, RHC(w/CAFO)
Honorable _____, ALJ/1900L (w/CAFO)
(EAD Attorney) _____, (w/CAFO)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Receipt #: _____

(Your Mail Code)

Re: (Company Name) _____
Docket No. _____

Dear _____ :

Enclosed please find an original signed fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on {filed date} with the Regional Hearing Clerk (RHC).

Please remit the first of _____ installments of the \$ _____ civil penalty, as prescribed in paragraphs(s) _____ of the CAFO, and reference all checks with the docket number _____ . Refer to Table 1 for further payment and due date information.

Installment #	Payment	Due on
1	\$0.00	(Month-day-year)
2	\$0.00	(Month-day-year)
"	"	"and so on as needed...."

Thank you for your cooperation in resolving this matter.

Sincerely,

(Name)
(Title)
(Section)

Enclosure

cc: Patricia A. Bullock, RHC (w/CAFO)
Honorable _____, ALJ/1900L (w/CAFO)
(EAD Attorney) _____, (w/CAFO)



**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Receipt #: _____

(Your Mail Code)

Re: **Transmittal of Administrative Complaint and
Consent Agreement And Final Order
Docket No:**

Dear _____ :

Enclosed is an Administrative Complaint (Complaint) that the United States Environmental Protection Agency (U.S. EPA) has filed against _____ (Company's name), under authority of Section _____ of the _____ Act (abbrev. of Act), _____ U.S.C. § _____. In the Complaint, the U.S. EPA alleges that _____ (Company's name), has violated Section _____ of (abbrev. of Act). This Complaint includes a Proposed Civil Penalty of \$ _____.

Also enclosed is a fully executed original of the Consent Agreement and Final Order (CAFO) that memorializes the settlement of the above-referenced Complaint and Proposed Civil Penalty. The U.S. EPA has filed an original CAFO with the Regional Hearing Clerk. By its terms, the CAFO is effective as of the date that it is filed with the Regional Hearing Clerk, U.S. EPA, Region 4. The originals of the Complaint and CAFO were filed with the Regional Hearing Clerk on {due date}.

Please pay the civil penalty in the amount of \$ _____ in the manner prescribed in paragraph _____ of the CAFO, and reference your check with the docket number _____. Pursuant to paragraph _____ of the CAFO, your payment is due on {due date}.

Thank you for your cooperation in resolving this matter.

Sincerely,

(Name)
(Title)
(Section)

Enclosure

cc: Patricia A. Bullock, RHC (w/CAFO)
(EAD) Attorney _____, (w/CAFO)

TRACKING OF SETTLEMENTS FOR JUDICIAL CASES:
These cases are not filed with the RHC.

Judicial cases are more difficult to track because the original Consent Decree, CAFO, or other settlement document is handled outside of the Agency. It is generally first received from the Department of Justice (DOJ) by the EAD attorney. Unfortunately, it is not uncommon for payment to be received in Finance before anyone knows the settlement document has been entered by the court.

- 1. The EAD attorney should get copy of settlement document from DOJ.***
- 2. Copies should be forwarded to Peggy Whitney (2-8200) in finance with completed Accounts Receivable Control Number Form.***
- 3. Copies should also be forwarded to Teresa Wright-Shirley (2-9647) with completed Case Conclusion Data Sheet, Superfund copies should be submitted to Tom Hernandez(2-9646) with a copy of the Accounts Receivable Form, Non-Superfund copies are submitted to the designated person(s) who enters the Accounts Receivable information, and the Program contact.***

RECEIVED

07 JUN 18 PM 2: 23

HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2007-0108

CITY OF MARSING,
Marsing, 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"), 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 in turn 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), 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 hereby issues, and the

1 City of Marsing ("Marsing") hereby agrees to issuance of, the Final Order contained in Part V of
2 this CAFO.

3 **II. PRELIMINARY STATEMENT**

4 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
5 commences this proceeding which will conclude when the Final Order contained in Part V of
6 this CAFO becomes effective.

7 2.2. Part III of this CAFO contains a concise statement of the factual basis for the
8 alleged violations of the CWA, together with specific provisions of the CWA and implementing
9 regulations that Marsing is alleged to have violated.

10 **III. ALLEGATIONS**

11 3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the "discharge of any
12 pollutants by any person" except as authorized by a National Pollutant Discharge Elimination
13 System ("NPDES") permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section
14 504(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to
15 include "any addition of any pollutant to navigable waters from any point source." "Navigable
16 waters" are defined as "waters of the United States." 33 U.S.C. § 1362(7).

17 3.2. Marsing is a municipality organized under the laws of the State of Idaho and,
18 thus, is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19 3.3. Marsing owns and operates a wastewater treatment facility ("Facility") located in
20 Marsing, Idaho.

21 3.4. Between April 23, 1986 and April 22, 1991, Marsing was authorized to discharge
22 municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-
23 002120-1 ("Expired Permit"). Marsing submitted a timely application for reissuance of the
24
25

1 Expired Permit, thus, the Expired Permit was administratively extended until the new NPDES
2 permit was issued.

3 3.5. Since May 1, 2004, Marsing has been authorized to discharge municipal
4 wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-002120-2
5 ("Current Permit"). The Current Permit expires on April 30, 2009.

6 3.6. The Facility, which was under Marsing's control at all times relevant to this
7 action, discharges pollutants from Outfall 001, which is located at latitude 43° 33' 06" North and
8 longitude 116° 48' 12" West. Outfall 001 is a "point source" within the meaning of Section
9 502(14) of the CWA, 33 U.S.C. § 1362(14).

10 3.7. The Facility discharges municipal wastewater containing pollutants into the Snake
11 River. The Snake River is a "navigable water" within the meaning of Section 502(7) of the
12 CWA, 33 U.S.C. § 1362(7), and a "water of the United States" within the meaning of 40 C.F.R.
13 § 122.2.

14 3.8. Section I.A. of the Expired and Current Permits establish effluent limitations for
15 the discharge from Outfall 001. These effluent limitations include, but are not limited to, limits
16 for biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), total residual
17 chlorine, *E. coli*, and fecal coliform bacteria.

18 3.9. Section I.B. of the Expired Permit and Section II.B. of the Current Permit requires
19 Marsing to summarize monitoring results for the Facility each month in a Discharge Monitoring
20 Report ("DMR").

21 3.10. Marsing's DMRs from May 2002 to June 2006 indicate that the Facility had 1,557
22 violations of the effluent limitations set forth in the Expired and Current Permits. When a
23 permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of
24 that effluent limit each of the days of the month in which the violation occurred. When a
25

1 permittee exceeds a weekly average effluent limit, the exceedance is counted as seven violations.
2 When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one
3 violation.

4 3.11. Section I.A. of the Expired and Current Permits contain a monthly average
5 concentration effluent limit for BOD in discharges from the Facility of 45 mg/L. Between May
6 2002 and June 2006, Marsing violated the monthly average effluent limit for BOD a total of ten
7 (10) months, constituting 305 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2002	31
June 2002	30
May 2003	31
April 2004	30
May 2004	31
June 2004	30
April 2005	30
May 2005	31
June 2005	30
August 2005	31

17 3.12. Section I.A. of the Expired and Current Permits contain a weekly average
18 concentration effluent limit for BOD in discharges from the Facility of 65 mg/L. Between May
19 2002 and June 2006, Marsing violated the weekly average effluent limit for BOD a total of four
20 (4) months, constituting 28 violations. The violations are as follows:

Month of Violation	Number of Violations
April 2004	7
May 2004	7
June 2004	7
May 2005	7

1 3.13. Section I.A. of the Expired and Current Permits contain a monthly average
2 removal requirement for BOD in discharges from the Facility that requires that the monthly
3 average effluent concentration does not exceed 35 percent (35%) of the monthly average influent
4 concentration. Between May 2002 and June 2006, Marsing violated the monthly average
5 removal requirement for BOD a total of eight (8) months, constituting 241 violations. The
6 violations are as follows:

7

Month of Violation	Number of Violations
June 2002	30
November 2003	30
April 2004	30
May 2004	30
June 2004	30
September 2004	30
August 2005	31
September 2005	30

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14 3.14. Section I.A. of the Expired Permit contains a monthly average concentration
15 effluent limit for TSS in discharges from the Facility of 70 mg/L. Section I.A. of the Current
16 Permit contains a monthly average concentration effluent limit for TSS in discharges from the
17 Facility of 45 mg/L. Between May 2002 and June 2006, Marsing violated the monthly average
18 effluent limit for TSS a total of eight (8) months, constituting 244 violations. The violations are
19 as follows:

20

Month of Violation	Number of Violations
April 2003	30
May 2003	31
April 2005	30
May 2005	31
June 2005	30

21
22
23
24
25

Month of Violation	Number of Violations
July 2005	31
August 2005	31
June 2006	30

3.15. Section I.A. of the Current Permit contains a monthly average mass effluent limit for TSS in discharges from the Facility of 113 lbs/day. Between May 2002 and June 2006, Marsing violated the monthly average mass effluent limit for TSS a total of two (2) months, constituting 61 violations. The violations are as follows:

Month of Violation	Number of Violations
September 2004	30
August 2005	31

3.16. Section I.A. of the Current Permit contains a weekly average concentration effluent limit for TSS in discharges from the Facility of 65 mg/L. Between May 2002 and June 2006, Marsing violated the weekly average concentration effluent limit for TSS a total of three (3) months, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2005	7
July 2005	7
August 2005	7

3.17. Section I.A. of the Current Permit contains a weekly average mass effluent limit for TSS in discharges from the Facility of 163 lbs/day. Between May 2002 and June 2006, Marsing violated the weekly average mass effluent limit for TSS in September 2004, constituting 30 violations.

1 3.18. Section I.A. of the Current Permit contains a monthly average removal
2 requirement for TSS in discharges from the Facility that requires that the monthly average
3 effluent concentration shall not exceed 35% of the monthly average influent concentration.
4 Between May 2002 and June 2006, Marsing violated the monthly average removal requirement
5 for TSS a total of seven (7) months, constituting 214 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2004	31
October 2004	31
November 2004	30
June 2005	30
July 2005	31
August 2005	31
September 2005	30

12
13 3.19. Section I.A. of the Expired Permit contained a weekly average effluent limit for
14 fecal coliform bacteria in discharges from the Facility of 200 colonies/100 mL. Between May
15 2002 and June 2006, Marsing violated the weekly average effluent limit for fecal coliform
16 bacteria in November 2003, constituting 7 violations.

17 3.20. Section I.A. of the Current Permit contains a monthly average concentration
18 effluent limit for total residual chlorine in discharges from the Facility of 0.5 mg/L. Between
19 May 2002 and June 2006, Marsing violated the monthly average concentration effluent limit for
20 total residual chlorine a total of seven (7) months, constituting 212 violations. The violations are
21 as follows:

Month of Violation	Number of Violations
September 2004	30
October 2004	31
November 2004	30

Month of Violation	Number of Violations
December 2004	31
January 2005	31
February 2005	28
March 2005	31

3.21. Section I.A. of the Current Permit contains a monthly average mass effluent limit for total residual chlorine in discharges from the Facility of 1.3 lbs/day. Between May 2002 and June 2006, Marsing violated the monthly average mass effluent limit for total residual chlorine a total of three (3) months, constituting 91 violations. The violations are as follows:

Month of Violation	Number of Violations
September 2004	30
October 2004	31
November 2004	30

3.22. Section I.A. of the Current Permit contains a weekly average concentration effluent limit for total residual chlorine in discharges from the Facility of 0.75 mg/L. Between May 2002 and June 2006, Marsing violated the weekly average concentration effluent limit for total residual chlorine a total of seven (7) months, constituting 49 violations. The violations are as follows:

Month of Violation	Number of Violations
September 2004	7
October 2004	7
November 2004	7
December 2004	7
January 2005	7
February 2005	7
March 2005	7

1 3.23. Section I.A. of the Current Permit contains a weekly average mass effluent limit
2 for total residual chlorine in discharges from the Facility of 1.9 lbs/day. Between May 2002 and
3 June 2006, Marsing violated the weekly average mass effluent limit for total residual chlorine a
4 total of three (3) months, constituting 21 violations. The violations are as follows:

5

Month of Violation	Number of Violations
September 2004	7
October 2004	7
November 2004	7

6
7
8

9 3.24. Section I.A. of the Current Permit contains a monthly average effluent limit for
10 *E.coli* in discharges from the Facility of 126 colonies/100 mL. Between May 2002 and June
11 2006, Marsing violated the monthly average effluent limit for *E.coli* in September 2004,
12 constituting 30 violations.

13 3.25. Section I.A. of the Current Permit contains a daily maximum effluent limit for
14 *E.coli* in discharges from the Facility of 406 colonies/100mL. Between May 2002 and June
15 2006, Marsing violated the daily maximum effluent limit for *E.coli* in September 2004,
16 September 2005, and May 2006, constituting 3 violations.

17 3.26. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an
18 administrative penalty when EPA finds that "any person ... has violated any permit condition or
19 limitations ... in a permit issued" pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The
20 permit violations alleged for the Facility constitute violations of Section 301(a) of the CWA, 33
21 U.S.C. § 1311(a). Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. §
22 1319(g)(2)(B), Marsing is liable for the administrative assessment of civil penalties for
23 violations at the Facility in an amount not to exceed \$11,000 per day for each day during which
24 the violation continues, up to a maximum amount of \$157,500.

1 **IV. CONSENT AGREEMENT**

2 4.1. Marsing stipulates that EPA has jurisdiction over the subject matter alleged
3 herein.

4 4.2. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA
5 has taken into account the nature, circumstances, extent, and gravity of the alleged violations as
6 well as Marsing's economic benefit of noncompliance, ability to pay, and other relevant factors.
7 After considering all of these factors, EPA has determined and Marsing agrees that an
8 appropriate penalty to settle this action is in the amount of Three Thousand Five Hundred
9 Dollars (\$3,500.00).

10 4.3. Marsing neither admits nor denies the specific factual allegations contained in
11 Part III of this CAFO.

12 4.4. Marsing consents to issuance of the Final Order set forth in Part V, below, and
13 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days of
14 the effective date of the Final Order.

15 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
16 payable to the order of "Treasurer, United States of America" and delivered to the following
17 address:

18 Mellon Bank
19 EPA Region 10
20 P.O. Box 36903M
Pittsburgh, Pennsylvania 15251

21 Marsing shall note on the check the title and docket number of this action.

22 4.6. Marsing shall serve photocopies of the check described in Paragraph 4.5, above,
23 on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement
24 at the following addresses:

1 Regional Hearing Clerk
2 U.S. Environmental Protection Agency
3 Region 10
4 1200 Sixth Avenue, ORC-158
5 Seattle, WA 98101

6 Office of Compliance and Enforcement
7 Attn: Jamie Sikorski
8 U.S. Environmental Protection Agency
9 Region 10
10 1200 Sixth Avenue, OCE-133
11 Seattle, WA 98199

12 4.7. If Marsing fails to pay the penalty assessed by this CAFO in full by the due date
13 set forth in Paragraph 4.4, above, the entire unpaid balance of penalty and accrued interest shall
14 become immediately due and owing. If Marsing fails to pay the penalty assessed, Marsing may
15 be subject to a civil action to collect the assessed penalty under the CWA, together with interest,
16 fees, costs, and additional penalties described below. In any collection action, the validity,
17 amount, and appropriateness of the penalty shall not be subject to review.

18 4.8. If Marsing fails to pay any portion of the penalty assessed by this CAFO in full by
19 the due date set forth in Paragraph 4.4, above, Marsing shall be responsible for payment of the
20 amounts described below:

21 4.8.1. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9),
22 any unpaid portion of the assessed penalty shall bear interest at a rate established by the
23 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
24 Final Order set forth in Part V, below, provided, however, that no interest shall be
25 payable on any portion of the assessed penalty that is paid within thirty (30) days of the
effective date of the Final Order.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Marsing fails to pay on a timely

1 basis the amount of the penalty set forth in Paragraph 4.3, above, Marsing shall pay (in
2 addition to any assessed penalty and interest) attorneys fees and costs for collection
3 proceedings and a quarterly nonpayment penalty for each quarter during which such
4 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty
5 percent (20%) of the aggregate amount of Marsing's penalties and nonpayment penalties
6 which are unpaid as of the beginning of such quarter.

7 4.9. The penalty described in Paragraph 4.2, above, including any additional costs
8 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA
9 and shall not be deductible for purposes of federal taxes.

10 4.10. The undersigned representative of Marsing certifies that he or she is fully
11 authorized to enter into the terms and conditions of this CAFO and to bind Marsing to this
12 document.

13 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own
14 costs in bringing or defending this action.

15 4.12. Marsing expressly waives any rights to contest the allegations and waives any
16 right to appeal the Final Order set forth in Part V, below.

17 4.13. The provisions of this CAFO shall bind Marsing and its agents, servants,
18 employees, successors, and assigns.

19 4.14. The above provisions are **STIPULATED AND AGREED** upon by Marsing and
20 EPA

1 DATED:

CITY OF MARSING:

2 18 APR 2007

3 18 APR 2007

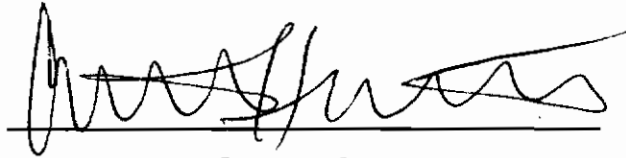


4 DONALD D. OSTERHOUDT
5 Mayor
6 For Respondent

7 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

8
9 4/24/07



10 COURTNEY J. HAMAMOTO
11 Assistant Regional Counsel
12 For Complainant

13
14 **V. FINAL ORDER**

15 5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by
16 reference into this Final Order. Marsing is hereby ordered to comply with the foregoing terms of
17 the settlement.


18 5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
19 pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R.
20 § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue
21 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
22 This CAFO does not waive, extinguish, or otherwise affect Marsing's obligations to comply with
23 all applicable provisions of the CWA, applicable CWA regulations, and/or any permits issued
24 thereunder.

1 5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
2 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the
3 opportunity to consult with EPA regarding the assessment of the administrative civil penalty
4 against Marsing.

5 5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA
6 has published public notice of its intent to assess an administrative penalty against Marsing and
7 to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have
8 elapsed since the issuance of this public notice, and EPA has received no petition to set aside the
9 Consent Agreement contained herein.

10 5.5. This Final Order shall become effective upon filing.

11
12 SO ORDERED this 18th day of June, 2007.

13
14 
15 _____
16 RICHARD G. McALLISTER
17 Regional Judicial Officer
18 U.S. Environmental Protection Agency
19 Region 10
20
21
22
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25

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: City of Marsing, DOCKET NO.: CWA-10-2007-0108** was filed with the Regional Hearing Clerk on June 18, 2007.


On June 18, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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 June 18, 2007, to:

Mayor Donald D. Osterhoudt
City of Marsing
P.O. Box 125
Marsing, Idaho 83639

DATED this 18th day of June 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10