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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2017-0132
)	
CITY OF WILDER)	CONSENT AGREEMENT AND
Wilder, 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 309(g)(2)(B) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g)(2)(B). 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.

1.2. Pursuant to Sections 309(g)(1) and 309(g)(2) of the CWA, 33 U.S.C. §§ 1319(g)(1) and (g)(2), 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 Wilder (“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 22.18(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 the 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 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). CWA Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, solid waste,

sewage, sewage sludge, biological materials, and industrial and municipal waste. 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 municipal corporation duly organized and existing under the laws of the State of Idaho. Respondent is thus a “municipality” as defined in CWA Section 502(4), 33 U.S.C. § 1362(4), and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.5 Respondent owns and operates the City of Wilder Wastewater Treatment Plant (the “Facility”), which is located in the City of Wilder. The Facility provides secondary treatment for municipal sewage.

3.6 At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES General Permit No. ID-002026-5 (the “Permit”). The Permit became effective on June 1, 2005 and expired on May 31, 2010. The permit has been administratively extended since expiration.

3.7 The Facility discharges pollutants from an outfall labeled “Outfall 001” to the Wilder Ditch Drain. Outfall 001 is a “point source” as defined in 40 C.F.R. § 122.2.

3.8 The Wilder Ditch Drain is a tributary of the Lower Boise River. The Lower Boise River flows into the Snake River. The Snake River is an interstate water that is susceptible to use in interstate and foreign commerce. The Wilder Ditch Drain is thus a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.9 By discharging wastewater containing pollutants from the Facility into waters of the United States, Respondent engaged in the “discharge of pollutants” from point sources within the meaning of CWA Sections 301(a) and 502(13), 33 U.S.C. §§ 1311(a) and 1362(12).

3.10 An authorized EPA representative inspected the Facility on May 17, 2016, to determine compliance with Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Permit.

3.11 At the time of the inspection, the authorized EPA representative observed or learned of the following violations of the Permit at the facility:

3.11.1 Inadequate Quality Assurance Project Plan (“QAPP”), in violation of Section I.E of the Permit. Specifically, the QAPP was missing:

3.11.1.1 Details on the number of samples, type of sample containers, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type of number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements;

3.11.1.2 Map(s) indicating the location of each sampling point;

3.11.1.3 Qualification and training of personnel; and

3.11.1.4 Address(es) and telephone number(s) of the laboratories used by or proposed to be used by the Facility.

3.11.2 Lack of calibration records for the pH meter and flow meter, in violation of Section II.F of the Permit.

3.11.3 Inadequate records of monitoring information, in violation of Section II.E of the Permit. Specifically, the records of monitoring information lack:

3.11.3.1 Time of sampling or measurements;

3.11.3.2 The name(s) of the individual(s) who performed the sampling or measurements;

3.11.3.3 The names of the individual(s) who performed the analyses; and

3.11.3.4 The analytical techniques or methods used.

3.11.4 Lack of noncompliance reporting between March 25, 2014 and the date of the inspection, in violation of Section II.G of the Permit.

3.11.5 Violation of the maximum holding time for *E. Coli* on December 28, 2015, in violation of 40 CFR Part 136, as required by Section II.C of the Permit.

3.11.6 Violation of the maximum sample preservation temperature for 5-day Biological Oxygen Demand (“BOD₅”) on September 1, 2015, in violation of 40 CFR Part 136, as required by Section II.C of the Permit.

3.11.7 Inaccurate and incomplete discharge monitoring reports (“DMRs”), in violation of Sections II.B.1, II.C, and IV.E.4 of the Permit. Specifically, the Facility inaccurately reported pH and total residual chlorine (“TRC”) values in October of 2015 and its DMRs lacked units of measurement in October and December of 2015.

3.11.8 Failure to report all pH and TRC monitoring events in October of 2015, in violation of Section II.D of the Permit.

3.11.9 Inaccurate calculation of average mass loadings, in violation of Sections V.3 and V.6 of the Permit.

3.11.10 Improper operation and maintenance, in violation of Section III.E of the Permit. At the time of the inspection, the following equipment was inoperable: two of the aerators, both of the sand filters, the chlorine mixer, and the effluent flow meter. In addition, the composite sampler did not have operable thermometers.

3.12 The Permit establishes effluent limits for the discharges from the point source at the Facility. These effluent limits include, but are not limited to, *E. coli*, pH, total suspended solids (“TSS”), BOD₅, and TRC.

3.13 Respondents DMRs from June of 2012 through September of 2016 show that the Facility had 1,517 effluent limit violations of the Permit. When a permittee exceeds an average monthly effluent limit, the permittee is deemed to be in violation of the effluent limit each day of the month in which the exceedance occurred. When a permittee exceeds an average weekly 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.

3.14 Part I.A.1 of the Permit specifies that the instantaneous maximum limit of *E. Coli* in the effluent shall not exceed 576/100 milligrams per liter (ml). From June of 2012 through September of 2016, Respondent exceeded the instantaneous maximum limit for *E. coli* 1 time, constituting 1 violation. The violation is:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2016	1200	#/100ml	1

3.15 Part I.A.2 of the Permit specifies that the pH range of the effluent shall be between 6.5 and 9 standard units (“SU”). From June 2012 through September 2016, Respondent violated this range for pH 2 times, constituting 2 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2016	6.14	SU	1
April 2016	6.46	SU	1

3.16 Part I.A.4 of the Permit specifies that the average monthly effluent concentration of TSS shall not exceed 15 percent of the monthly average influent concentration. This represents a minimum 85 percent removal requirement. From June 2011 through September 2016, Respondent did not meet the 85 percent average monthly removal of TSS 1 time, constituting 30 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
April 2013	84	%	30

3.17 Part 1.A.1 of the Permit specifies that the average weekly loading of total TSS in the effluent shall not exceed 94 pounds per day (lbs/day). From June 2011 through September 2016, Respondent exceeded the average weekly loading limit for total TSS 1 time, constituting 7 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
April 2016	101	lbs/d	7

3.18 Part 1.A.1 of the Permit specifies that the average weekly concentration of total TSS in the effluent shall not exceed 45 mg/L. From June 2011 through September 2016, Respondent exceeded the average weekly concentration limit for total TSS 3 times, constituting 21 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2013	49	mg/L	7
April 2013	57	mg/L	7

April 2016	49	mg/L	7
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3.19 Part I.A.1 of the Permit specifies that the average monthly concentration of total TSS in the effluent shall not exceed 30 mg/L. From June 2011 through September 2016, Respondent exceeded the average monthly concentration limit for total TSS 5 times, constituting 153 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2013	41	mg/L	31
April 2013	32	mg/L	30
April 2016	49	mg/L	30
July 2016	32	mg/L	31
August 2016	43	mg/L	31

3.20 Part I.A.4 of the Permit specifies that the monthly average effluent concentration of BOD₅ shall not exceed 15 percent of the monthly average influent concentration. This represents a minimum 85 percent removal requirement. From June 2011 through September 2016, Respondent did not meet the 85 percent average monthly removal of BOD₅ 20 times, constituting 609 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
June 2012	81	%	30
July 2012	81	%	31
January 2013	82	%	31
June 2013	83	%	30
July 2013	78	%	31
August 2013	79	%	31
September 2013	79	%	30
January 2014	69	%	31
February 2014	57	%	28

May 2014	82	%	31
June 2014	81	%	30
August 2014	84	%	31
September 2014	84	%	30
December 2014	79	%	31
March 2015	80	%	31
May 2015	72	%	31
June 2015	80	%	30
August 2015	77	%	31
February 2016	77	%	29
March 2016	71	%	31

3.21 Part I.A.1 of the Permit specifies that the average weekly concentration of BOD₅ in the effluent shall not exceed 45 mg/L. From June 2011 through September 2016, Respondent exceeded the average weekly concentration limit for BOD₅ 10 times, constituting 70 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
June 2013	49	mg/L	7
January 2014	69	mg/L	7
February 2014	94	mg/L	7
April 2015	51	mg/L	7
May 2015	57	mg/L	7
August 2015	96	mg/L	7
March 2016	80	mg/L	7
April 2016	83	mg/L	7
May 2016	48	mg/L	7
June 2016	55	mg/L	7

3.22 Part I.A.1 of the Permit specifies that the average weekly loading of BOD₅ in the effluent shall not exceed 94 lbs/d. From June 2011 through September 2016, Respondent exceeded the average weekly loading limit for total BOD 2 times, constituting 14 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
June 2013	186	lbs/d	7
April 2016	171	lbs/d	7

3.23 Part I.A.1 of the Permit specifies that the average monthly concentration of BOD₅ in the effluent shall not exceed 30 mg/L. From June 2011 through September 2016, Respondent exceeded the average weekly concentration limit for BOD₅ 18 times, constituting 548 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
June 2012	32	mg/L	30
January 2013	40	mg/L	31
June 2013	37	mg/L	30
July 2013	31	mg/L	31
January 2014	69	mg/L	31
February 2014	69	mg/L	28
June 2014	33	mg/L	30
December 2014	39	mg/L	31
March 2015	42	mg/L	31
April 2015	37	mg/L	30
May 2015	57	mg/L	31
June 2015	41	mg/L	30
August 2015	96	mg/L	31
March 2016	59	mg/L	31
April 2016	83	mg/L	30
May 2016	48	mg/L	31
June 2016	45	mg/L	30
August 2016	33	mg/L	31

3.24 Part I.A.1 of the permit specifies that the average monthly loading of BOD₅ in the effluent shall not exceed 62.5 lbs/d. From June 2011 through September 2016, Respondent exceeded the average monthly loading limit for BOD₅ 1 time, constituting 30 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
April 2016	67	lbs/d	30

3.25 Part I.A.1 of the Permit specifies that the daily maximum concentration of TRC in the effluent shall not exceed 0.018 mg/L. This effluent limit is not quantifiable using EPA approved test methods. As a result, the Permit includes a compliance evaluation level of 0.1 mg/L. From June 2012 through September 2016, Respondent exceeded the daily maximum compliance evaluation level for TRC 1 time, constituting 1 violation. The violation is:

Month of Violation	Value Reported in DMR	Units	Number of Violations
October 2015	0.20	mg/L	1

3.26 Part I.A.1 of the Permit specifies that the maximum daily loading of TRC in the effluent shall not exceed 0.038 lbs/d. This effluent limit is not quantifiable using EPA approved test methods. As a result, the Permit includes a compliance evaluation level of 0.21 lbs/d. From June 2012 through September 2016, Respondent exceeded the maximum daily concentration limit for TRC 1 time, constituting 1 violation.

Month of Violation	Value Reported in DMR	Units	Number of Violations
September 2013	8	lbs/d	1

3.27 Part I.A.1 of the Permit specifies that the average monthly loading limit of TRC in the effluent shall not exceed 0.015 lbs/d. This effluent limit is not quantifiable using EPA approved test methods. As a result, the Permit includes a compliance evaluation level of 0.21 lbs/d. From June 2012 through September 2016, Respondent exceeded the monthly maximum loading limit for TRC 1 time, constituting 30 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
September 2013	8	lbs/d	30

3.28 During the violations period set forth above, Respondent made good-faith efforts to come into compliance with the Permit.

IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations of this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in 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 that an appropriate penalty to settle this action is \$8,900.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

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 serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Teresa Young
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Raymond Andrews
Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, 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 311(b)(6)(H) of the CWA, 33 U.S.C.

§ 1321(b)(6)(H), 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 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), 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 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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

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

DATED:

July 27-2017

FOR RESPONDENT:

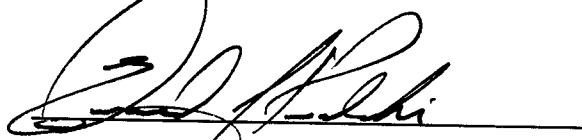


ALICIA ALMAZAN, Mayor
City of Wilder

DATED:

August 3, 2017

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. **FINAL ORDER**

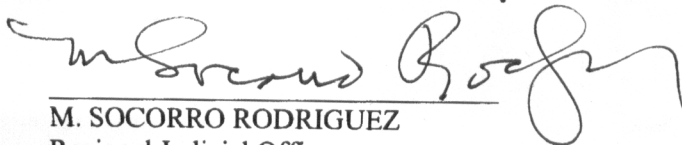
5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

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. Pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) 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.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 15th day of September, 2017.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA 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 Wilder, CWA-10-2017-0132** was filed with the Regional Hearing Clerk and served on the following addressees in the manner and on the date specified below:

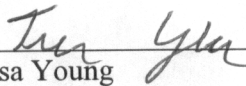
The undersigned certifies that a true and correct copy of the above-described document was delivered to:

Ashley Palomaki
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
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 to:

Alicia Almazan
219 Third Street
P.O. Box 687
Wilder, ID 83676

DATED this 18 day of September 2017.



Teresa Young
Regional Hearing Clerk
EPA Region 10