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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:)	Docket No. CWA-10-2000-0095
City and Borough of Juneau, Alaska)	
Mendenhall Wastewater Treatment Facility)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA, Region 10.

1.2. Pursuant to Section 309(g)(1) and (2)(B) of the Act 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 City and Borough of Juneau, Alaska (“Respondent”) hereby agrees to issuance of the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), by issuing a Complaint against Respondent on September 8, 2000.

2.2. The Complaint alleged that Respondent violated the Clean Water Act when Respondent (a) failed to operate and maintain its facility as required by its National Pollutant Discharge Elimination System (“NPDES”) permit; (b) discharged wastewater in excess of its NPDES permit limits from its facility into waters of the United States; and (c) failed to notify EPA within 24 hours that Respondent had bypassed untreated sewage.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

III. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

3.1. Respondent admits the jurisdictional allegations contained in the Complaint.

3.2. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

3.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), as a result of information exchanged during the negotiations prior to and after filing the Complaint, Respondent’s willingness to settle this matter without further litigation, the nature of the violations, Respondent’s agreement to perform a Supplemental Environmental Project (“SEP”) and other relevant factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of THIRTY THOUSAND DOLLARS (\$30,000).

3.4. Respondent consents to the issuance of the Final Order contained in Part IV of this CAFO, payment of the civil penalty cited in the foregoing paragraph no later than 30 days of the effective date of the Final Order, and performance of the SEP described herein.

3.5. Payment under this CAFO shall be made by cashier’s check or certified check, payable to the order of “Treasurer, United States of America” and shall be delivered to the following address:

Mellon Bank
EPA Region 10

P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

Respondent shall note on the check the title and docket number of this case.

3.6. Respondent shall submit a photocopy of the check described above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Kristine Karlson
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop OW-133
Seattle, Washington 98101

3.7. Should Respondent fail to pay a 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. Should such a failure to pay occur, Respondent may be subject to an administrative action to collect payment under the federal Debt Collection Act, 31 U.S.C. § 3717, or to a civil action pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), to collect any unpaid portion of the assessed penalty, together with interest, handling charges, enforcement expenses including attorneys fees, and nonpayment penalties. In any such collection action, the validity, amount, and appropriateness of this CAFO or the penalty assessed hereunder are not subject to review.

3.8. Should Respondent fail to pay the penalties assessed by this CAFO in full by their due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Any portion of the of the assessed penalty that is unpaid by its due date shall bear interest at the rate established pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, 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.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9), 33 U.S.C. § 1319(g)(9), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States 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 outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

3.9. The civil penalty described in this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

3.10. Respondent shall complete a SEP, which the parties agree is intended to secure significant environmental restoration and protection, pursuant to the following conditions:

a. By October 31, 2002, Respondent shall design and construct a culvert along Duck Creek where it crosses Mendenhall Boulevard to accommodate passage by anadromous fish, as described in the March 8, 2000 permit application with engineering drawing, Exhibit A to this CAFO.

b. By October 31, 2002, Respondent shall improve stream channel characteristics for fish habitat by removing logs upstream of the Duck Creek and Mendenhall Boulevard crossing, as described in the March 8, 2000 permit application with engineering drawing, Exhibit A to this CAFO.

c. By October 31, 2002, Respondent shall install an oil/water separator to treat stormwater runoff from Mendenhall Boulevard to Duck Creek

d. Respondent will incur expenses of SIXTY THOUSAND DOLLARS (\$60,000) to perform this SEP as described in subparagraphs a., b., and c. of this Paragraph.

e. Any press release or similar public statement, whether oral or in writing, that is made by Respondent for distribution to the public and that makes reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

3.11. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required by any federal, state, or local law or regulation to perform the activities required by this SEP. Respondent further certifies that it is not required by any agreement, grant, or injunctive relief to perform these activities and that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for these activities.

3.12. Respondent shall submit a SEP Completion Report to EPA no later than thirty (30) days following completion of the SEP. Failure by Respondent to timely submit a complete and accurate SEP Completion Report shall be deemed a violation of this CAFO and shall subject Respondent to stipulated penalties pursuant to Paragraph 3.14 of this CAFO. The SEP Completion Report shall contain the following:

- a. documentation in the form of invoices or other verification of the costs Respondent incurred to implement the SEP; and
- b. certification that the SEP has been fully implemented pursuant to this CAFO.

3.13. Following receipt of the SEP Completion Report described in the preceding paragraph, EPA will do one of the following:

- a. approve the SEP Completion Report;
- b. reject the SEP Completion Report, notify Respondent in writing of deficiencies in the Report, and grant Respondent a reasonable amount of time, as determined by EPA, in which to correct any deficiencies; or

c. disapprove the SEP Completion Report and seek stipulated penalties in accordance with Paragraph 3.14 of this CAFO.

If EPA elects to exercise option b. or c. above, EPA shall allow Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 3.16 of this CAFO.

3.14. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the following provisions:

a. Except as provided in subparagraph b. immediately below, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$24,000.

b. If the SEP is not completed satisfactorily, but Respondent (i) made good faith and timely efforts to complete and implement the project; and (ii) certifies, with supporting documentation, that the cost of the project is at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

c. If the SEP is completed satisfactorily, but the cost of the SEP is less than ninety percent (90%) of the amount of money required for the project, Respondent shall

pay a stipulated penalty equal to \$60,000 minus the amount Respondent actually expended to complete the project.

d. For failure to timely submit the SEP Completion Report required by Paragraph 3.12. of this CAFO, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the Report is due until it is submitted. Such stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue until the Report is submitted, provided that the total stipulated penalties for failure to submit the Report shall not exceed \$3,000.

3.15. EPA, in its sole discretion, will determine whether the SEP has been satisfactorily completed and, if necessary, whether Respondent has made good faith and timely efforts to implement the SEP.

3.16. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for payment of such penalties. Stipulated penalties shall be paid in accordance with the provisions of Paragraphs 3.5 and 3.6 of this CAFO. Interest and late charges shall accrue as described in Paragraphs 3.7 and 3.8 of this CAFO.

3.17. The stipulated penalties described in Paragraphs 3.3 and 3.14 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

3.18. Respondent agrees that EPA or its designated representatives may inspect its construction project at reasonable times in order to confirm that the SEP is being undertaken in conformity with the representations made herein. This right of access is in addition to, and shall not limit, any access rights afforded by law or regulation.

3.19. All reports and submissions required by this CAFO shall be made to:

Kristine Karlson
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop OAQ-107
Seattle, Washington 98101

3.20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

3.21. Except as described in Paragraph 3.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

3.22. Respondent expressly waives any right to contest the allegations and their right to appeal the Final Order contained herein.

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

STIPULATED AND AGREED this 8 day of August, 2001:

City and Borough of Juneau, Alaska, Respondent

By [Signature] Dated: _____
(Print Name) DAVID ARMER
Title C.S. MANAGER

U.S. Environmental Protection Agency, Complainant

By [Signature] Dated: 8/10/01
Cara Steiner-Riley
Assistant Regional Counsel

IV. FINAL ORDER

4.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

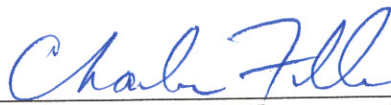
4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Act for the particular violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive 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 Act and regulations issued thereunder.

4.3. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent.

4.4. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice to inform the public of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than 40 days has elapsed since the issuance of this public notice, and EPA has received no petitions to set aside the Consent Agreement contained herein.

4.5. This Final Order shall become effective upon filing.

SO ORDERED this 9th day of August, 2001:



CHARLES E. FINDLEY
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order" was sent to the following persons, in the manner specified, on the date below:

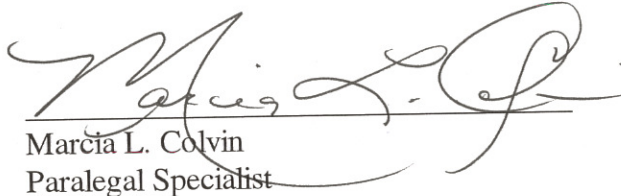
Original and one copy, hand-delivered:

Mary Shillcutt, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

A true and correct copy, by certified mail, return receipt requested:

Matt Cohen
Heller Ehrman
701 Fifth Avenue, Suite 6100
Seattle, Washington 98104-7098

Dated: August 15, 2001



Marcia L. Colvin
Paralegal Specialist