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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2013-0118
)	
City of St. Maries,)	
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 has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of St. Maries (“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 as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. Respondent is the owner and operator of a wastewater treatment plant (Facility) located in St. Maries, Idaho. Respondent is a municipality duly organized and existing under the laws of the State of Idaho. Respondent is thus a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. NPDES Permit ID-002279-9 (Permit) was issued to Respondent on September 17, 2007. The Permit became effective on October 1, 2007, and expired on September 30, 2012. A

permit application was received on March 28, 2012, and the Permit has been administratively extended, pursuant to 40 C.F.R. § 122.6.

3.4. 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 47° 19' 45.2" North and longitude 116° 35' 30.7" West. Outfall 001 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.5. The Facility discharges domestic wastewater containing pollutants into the St. Joe River. The St. Joe River flows through Chatcolet Lake into Lake Coeur d'Alene and then into Spokane River. The Spokane River is an interstate water which is susceptible to use in interstate and foreign commerce. Accordingly, the Spokane River is a "navigable water" as defined in CWA Section 502(7), 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. § 122.2. Therefore, the St. Joe River is a "navigable water" as defined in CWA Section 502(7), 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. § 122.2.

3.6. Section I.A of the Permit authorizes discharged wastewater from Outfall 001 to St. Joe River provided the discharge meets the limitations and monitoring requirements set forth in the Permit. The Permit establishes effluent limitations for the discharge from Outfall 001 and includes limits for biochemical oxygen demand (BOD), total suspended solids (TSS), total residual chlorine (TRC) and pH.

3.7. Section III.B of the Permit requires Respondent to summarize monitoring results for the Facility each month on a Discharge Monitoring Report (DMR) form. The permittee must submit reports monthly, postmarked by the 10th day of the following month.

3.8. Respondent's DMRs from July 2008 through April 2013 indicate that the Facility had 1,496 violations of the effluent limits set forth in the Permit. When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the month in which the exceedance occurred. When a permittee exceeds a weekly average 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. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation.

3.9. Section II.B of the Permit contains a monthly average removal requirement for BOD of 85% in discharges from the Facility, under which the monthly average effluent concentration must not exceed 15% of the monthly average influent concentration. Between July 2008 through April 2013, Respondent violated this limit 24 times, constituting 723 violations.

The violations are as follows:

Month of Violation	Number of Violations
January 2009	31
February 2009	28
March 2009	31
April 2009	30
January 2010	31
February 2010	28
March 2010	31
April 2010	30
June 2010	30
November 2010	30
December 2010	31
January 2011	31
February 2011	28
March 2011	31
April 2011	30
May 2011	31

Month of Violation	Number of Violations
June 2011	30
November 2011	30
January 2012	31
February 2012	29
March 2012	31
May 2012	31
February 2013	28
March 2013	31

3.10. Section II.B of the Permit contains a monthly average removal requirement for TSS of 85% in discharges from the Facility, under which the monthly average effluent concentration must not exceed 15% of the monthly average influent concentration. Between July 2008 through April 2013, Respondent violated this limit 18 times, constituting 541 violations.

The violations are as follows:

Month of Violation	Number of Violations
February 2009	28
March 2009	31
April 2009	30
February 2010	28
April 2010	30
January 2011	31
February 2011	28
March 2011	31
April 2011	30
December 2011	31
January 2012	31
February 2012	29
March 2012	31
May 2012	31
December 2012	31
January 2013	31
February 2013	28
March 2013	31

3.11. Section I.B of the Permit contains an instantaneous effluent limit for pH in discharges from the Facility of a range from 6.5 to 8.5 standard units. Between July 2008 through April 2013, Respondent violated this limit 15 times, constituting 15 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2009	1
January 2010	1
February 2010	1
April 2010	1
April 2011	1
May 2011	1
December 2011	1
January 2012	1
February 2012	1
March 2012	1
May 2012	1
January 2013	1
February 2013	1
March 2013	1
April 2013	1

3.12. Section I.A. of the Permit contains an average monthly concentration effluent limit for TRC of 0.233 mg/L in discharges from the Facility, beginning October 1, 2010. Between July 2008 through April 2013, Respondent violated this limit 1 time, constituting 31 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2012	31

3.13. Section I.A. of the Permit contains an average monthly mass effluent limit for TRC of 3.89 lb/day in discharges from the Facility, beginning October 1, 2010. Between July 2008 through April 2013, Respondent violated this limit 1 time, constituting 31 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2012	31

3.14. Section I.A. of the Permit contains a daily maximum concentration effluent limit for TRC of 0.305 mg/L in discharges from the Facility, beginning October 1, 2010. Between July 2008 through April 2013, Respondent violated this limit 2 times, constituting 2 violations. The violation is as follows:

Month of Violation	Number of Violations
December 2012	1
January 2013	1

3.15. Section I.A. of the Permit contains a daily maximum mass effluent limit for TRC of 5.09 lb/day in discharges from the Facility, beginning October 1, 2010. Between July 2008 through April 2013, Respondent violated this limit 2 times, constituting 2 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2012	1
January 2013	1

3.16. Section I.A. of the Permit contains an average monthly concentration effluent limit for TSS of 30 mg/L in discharges from the Facility. Between July 2008 through April

2013, Respondent violated this limit 1 time, constituting 31 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2012	31

3.17. Section I.A. of the Permit contains an average weekly concentration effluent limit for TSS of 45 mg/L mg/L in discharges from the Facility. Between July 2008 through April 2013, Respondent violated this limit 1 time, constituting 7 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2012	7

3.18. Section I.A. of the Permit contains an average monthly mass effluent limit for TSS of 500 lb/day in discharges from the Facility. Between July 2008 through April 2013, Respondent violated this limit 3 times, constituting 92 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2011	31
March 2012	31
April 2012	30

3.19. Section I.A. of the Permit contains an average weekly mass effluent limit for TSS of 751 lb/day in discharges from the Facility. Between July 2008 through April 2013, Respondent violated this limit 3 times, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2011	7
March 2012	7
April 2012	7

3.20. 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 civil penalty. Consequently, under CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$11,000 per day for each violation that occurred on or after March 15, 2004, through January 12, 2009, and \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum of \$177,500.

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 **eight thousand one hundred dollars (\$ 8,100)**.

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

David Domingo
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

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

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

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

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

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

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

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

DATED:

FOR RESPONDENT:

07/25/13



Signature

Print Name: Tami Holdahl

Title: Mayor of the City of St. Maries

DATED:

FOR COMPLAINANT:

7/31/2013



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

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

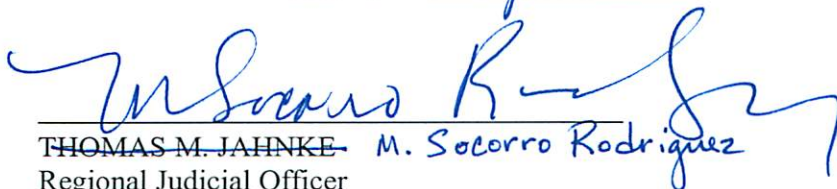
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable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

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

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 12th day of September, 2013.


~~THOMAS M. JAHNKE~~ 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 St. Maries, Idaho, Docket No. CWA-10-2013-0118**, 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 Tami Holdahl
Mayor of St. Maries
602 College Avenue
P.O. Box 60
St. Maries, Idaho 83861

Nancy A. Wolff, Esq.
Morris & Wolff, P.A.
722 Main Avenue
St. Maries, Idaho 83861

13 Sep 2013
Dated



Candace H. Smith
Regional Hearing Clerk
EPA Region 10