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HEARINGS CLERK
EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2018-0322

CITY OF KENDRICK, IDAHO,

CONSENT AGREEMENT

Respondent.

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415. See also 83 Fed. Reg. 1190 (January 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of Kendrick, Idaho (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2 The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant).

2.3 Part III of this Consent Agreement 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

Statutory and Regulatory Framework

3.1 As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2 Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.3 Section 402(a) of the CWA, 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.

3.4 Section 502(12) of the CWA, 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.”

3.5 CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. §§ 122.2 & 110.1 (2014).

General Allegations

3.5. Respondent is 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).

3.6 At all times relevant to this action, Respondent owned and operated the City of Kendrick Wastewater Treatment Facility (Facility), located on Highway 3 in Kendrick, Idaho.

3.7 The Facility discharges pollutants from Outfall 001 to an estuary on the Potlatch River. Outfall 001 is a “point source” as defined in 40 C.F.R. § 122.2.

3.8 The Potlatch River flows into the Clearwater River, which flows into the Snake River, which flows into the Columbia River. The Potlatch River is a tributary to an interstate water body that is subject to interstate commerce. As such, the Potlatch River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

3.10 At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID0024554 (Permit). The Permit became effective on April 1, 2005, and expired on March 31, 2010. EPA received Respondent’s permit application on March 16, 2010, and the Permit was administratively continued pursuant to 40 C.F.R. § 122.6.

Violations

3.11 An authorized representative of the Idaho Department of Environmental Quality inspected the Facility on September 19, 2017, to determine compliance with Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Permit.

3.12 At the time of the inspection, the authorized representative of the Idaho Department of Environmental Quality observed or learned of the following violations of the Permit at the Facility:

3.12.1 Respondent failed to keep a copy of its quality assurance plan on site, in violation of Section I.E.5 of the Permit.

3.12.2 Respondent failed to conduct monitoring for pH and total residual chlorine in accordance with test procedures approved under 40 C.F.R. § 136, in violation of Section II.C of the Permit.

3.12.3 Respondent failed to record the required monitoring information, in violation of Section II.E of the Permit.

3.13 Section I.A and Table 1 of the Permit establish effluent limitations for the discharge from Outfall 001. These effluent limits include, but are not limited to, BOD₅, total suspended solids ("TSS"), *Escherichia coli* ("*E. coli*"), Total Residual Chlorine ("TRC"), total phosphorus, pH, total ammonia, and temperature.

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

3.15 Respondent's DMRs from August 2013 through February 2018 indicate that the Facility had 884 violations of the effluent limits set forth in the Permit.

3.16 When a permittee exceeds a monthly average 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 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 an instantaneous effluent limit, the violation counts as one violation.

3.17 Part I.A.1 of the permit specifies that the instantaneous maximum limit of *E. coli* in the effluent shall not exceed 406/100ml. From August 2013 through February 2018,

Respondent exceeded the instantaneous maximum limit for *E. coli* 5 times, constituting 5 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
February 2015	<i>E. coli</i>	406	488.4	#/100mL
October 2016	<i>E. coli</i>	406	2419.6	#/100mL
January 2017	<i>E. coli</i>	406	2419.6	#/100mL
March 2017	<i>E. coli</i>	406	686.7	#/100mL
December 2017	<i>E. coli</i>	406	2419.6	#/100mL

3.18 Part I.A.2 of the permit specifies that the maximum limit of pH in the effluent shall not be greater than 9.0 standard units. From August 2013 through February 2018, Respondent exceeded the maximum limit for pH 2 times, constituting 2 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2014	pH	9	9.5	SU
May 2015	pH	9	9.87	SU

3.19 Part I.A.4 of the permit specifies that the average monthly effluent concentration of TSS shall not exceed 35 percent of the monthly average influent concentration. This represents a minimum 65 percent removal requirement. From August 2013 through February 2018, Respondent did not meet the 65 percent average monthly removal of TSS 2 times, constituting 61 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
May 2015	TSS	65	60.8	%
April 2017	TSS	65	61.7	%

3.20 Part I.A.1 of the permit specifies that the average weekly concentration of total TSS in the effluent shall not exceed 65 mg/L. From August 2013 through February 2018, Respondent exceeded the average weekly concentration limit for total TSS 1 time, constituting 7 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
May 2015	TSS	65	91.7	mg/L

3.21 Part I.A.1 of the permit specifies that the average monthly loading of total TSS in the effluent shall not exceed 30 lbs/d. From August 2013 through February 2018, Respondent exceeded the average monthly concentration limit for total TSS 1 time, constituting 31 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2017	TSS	30	289.0	lbs/d

3.22 Part I.A.1 of the permit specifies that the average monthly concentration of total TSS in the effluent shall not exceed 45 mg/L. From August 2013 through February 2018, Respondent exceeded the average monthly concentration limit for total TSS 4 times, constituting 119 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2014	TSS	45	49.0	mg/L
February 2015	TSS	45	46.0	mg/L
May 2015	TSS	45	91.7	mg/L
November 2016	TSS	45	54.0	mg/L

3.23 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 August 2013 through February 2018, Respondent did not meet the 85 percent average monthly removal of BOD₅ 10 times, constituting 303 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
May 2015	BOD ₅	85	49.2	%
October 2016	BOD ₅	85	51.0	%
January 2017	BOD ₅	85	71.8	%
February 2017	BOD ₅	85	19.0	%
March 2017	BOD ₅	85	54.0	%
April 2017	BOD ₅	85	15.0	%
May 2017	BOD ₅	85	27.5	%
December 2017	BOD ₅	85	83	%
January 2018	BOD ₅	85	58.9	%
February 2018	BOD ₅	85	81	%

3.24 Part I.A.1 of the permit specifies that the average weekly loading of BOD₅ in the effluent shall not exceed 45 mg/L. From August 2013 through February 2018, Respondent exceeded the average weekly loading limit for BOD₅ 1 time, constituting 7 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
November 2016	BOD ₅	45	45.7	mg/L

3.25 Part I.A.1 of the permit specifies that the average weekly loading of BOD₅ in the effluent shall not exceed 30 lbs/d. From August 2013 through February 2018, Respondent exceeded the average weekly loading limit for BOD₅ 2 times, constituting 14 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
February 2017	BOD ₅	30	30.8	lbs/d
March 2017	BOD ₅	30	44.7	lbs/d

3.26 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 August 2013 through February 2018, Respondent exceeded the average monthly concentration limit for BOD₅ 6 times, constituting 181 violations.

The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2014	BOD ₅	30	30.6	mg/L
October 2016	BOD ₅	30	35.2	mg/L

November 2016	BOD ₅	30	45.7	mg/L
January 2017	BOD ₅	30	44.8	mg/L
February 2017	BOD ₅	30	42.8	mg/L
December 2017	BOD ₅	30	36.1	mg/L

3.27 Part I.A.1 of the permit specifies that the average monthly loading of BOD₅ in the effluent shall not exceed 20 lbs/d. From August 2013 through February 2018, Respondent exceeded the average monthly loading limit for BOD₅ 4 times, constituting 120 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
January 2017	BOD ₅	20	24.0	lbs/d
February 2017	BOD ₅	20	45.4	lbs/d
March 2017	BOD ₅	20	48.3	lbs/d
April 2017	BOD ₅	20	33.17	lbs/d

3.28 Part I.A.1 of the permit specifies that the maximum daily limit of TRC in the effluent shall not exceed 0.018 mg/L. From August 2013 through February 2018, Respondent exceeded the daily maximum limit 3 times, constituting 3 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
December 2017	TRC	0.1	0.35	mg/L
January 2018	TRC	0.1	0.14	mg/L
February 2018	TRC	0.1	0.12	mg/L

3.29 Part I.A.1 of the permit specifies that the monthly average limit of TRC in the effluent shall not exceed 0.007 mg/L. From August 2013 through February 2018, Respondent exceeded the daily maximum limit 1 time, constituting 31 violations. The violations are:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
December 2017	TRC	0.1	0.11	mg/L

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

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 violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle the alleged violations is \$9,900.

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

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check

or certified check must be payable to the order of "Treasurer, United States of America" and delivered 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. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Young.Teresa@epa.gov

Charissa Bujak, Compliance Officer
U.S. Environmental Protection Agency
Idaho Operations Office
950 West Bannock Street
Boise, Idaho 83702
Bujak.charissa@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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 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, 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 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 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, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. Except as described in Paragraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

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

4.11. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this Consent Agreement, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B), and (4)(C), its right to

appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B), its right to seek federal judicial review of the Consent Agreement and Final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and its right to appeal this Consent Agreement. Respondent also consents to the issuance of this Consent Agreement without further adjudication.

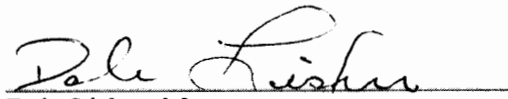
4.12. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

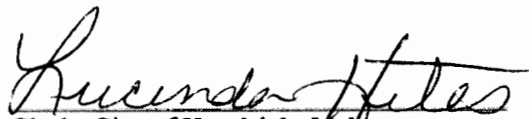
4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

FOR CITY OF KENDRICK, IDAHO:

8-14-2018

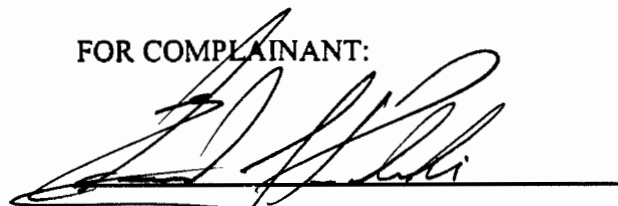

Dale Lisher, Mayor
City of Kendrick, Idaho


Lucinda Hites
Clerk, City of Kendrick, Idaho

DATED:

FOR COMPLAINANT:

8/29/2018


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF KENDRICK, IDAHO,

Respondent.

DOCKET NO. CWA-10-2018-0322

FINAL ORDER

Proceedings Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

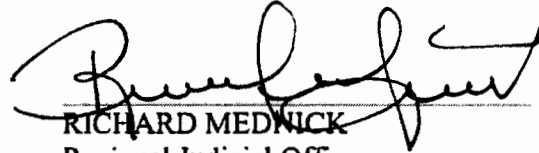
1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

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

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

4. This Final Order shall become effective upon filing.

SO ORDERED this 11th day of September, 2018.



RICHARD MEDNICK
Regional Judicial Officer
U.S. Environmental Protection Agency
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 Kendrick, Idaho, DOCKET NO.: CWA-10-2018-0322**, was filed with the Regional Hearing Clerk on the date below.

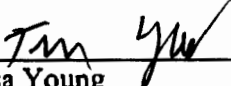
The undersigned certifies that a true and correct copy of the document was delivered to:

J. Matthew Moore
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
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 the date below to:

Mr. Dale Lisher
Mayor
City of Kendrick, Idaho
P.O. Box 195
Kendrick, Idaho 83537

DATED this 12 day of September, 2018.



Teresa Young
Regional Hearing Clerk
EPA Region 10