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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. CWA-10-2012-0013
)
)
CITY OF REXBURG, 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 Rexburg, Idaho (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, has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), 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 Clean Water Act (Act), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person 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 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 domestic wastewater treatment facility (Facility) which treats domestic sewage for a population of approximately 20,000 local residents. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5). Respondent is also a public body created by or pursuant to State law and having jurisdiction over

the disposal of wastes and is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

3.3. Respondent owns and operates the Facility which is located at 525 North 5th West in Rexburg, Idaho.

3.4. NPDES Permit ID-0023817 (“Permit”) was issued to Respondent for the Facility and became effective on September 11, 2001. The Permit expired on September 11, 2006. Respondent did not submit an application to renew the Permit at least 180 days before the expiration date of the Permit as required by 40 C.F.R. § 122.21(d)(1). Because Respondent failed to re-submit a timely and complete application to renew the Permit, the Permit expired and could not be administratively extended.

3.5. The Permit authorized discharges of pollutants to the South Fork Teton River through Outfall 001 and to the Rexburg Canal through Outfall 002. The Rexburg Canal flows into the South Fork Teton River and both the canal and river are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2. Outfall 001 and Outfall 002 are each a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.6. Respondent submitted a new NPDES permit application to EPA on October 7, 2006. EPA informed Respondent by correspondence dated October 27, 2006, and again on January 17, 2007, that the application was incomplete. EPA issued a Notice of Violation to Respondent on February 11, 2009, notifying Respondent that Respondent’s permit application was incomplete. EPA issued a Compliance Order to Respondent on March 23, 2009, ordering Respondent to submit a complete permit application. Respondent submitted permit application materials to EPA on May 21, 2009, but on May 27, 2009, and again on July 14, 2009, EPA

informed Respondent that information was still missing and the permit application was still incomplete.

3.7. Respondent has been operating the Facility and discharging pollutants to navigable waters of the United States via either Outfall 001 to the South Fork Teton River or Outfall 002 to the Rexburg Canal without a permit since the Permit expired, i.e. as of September 12, 2006.

3.8. The discharge of any pollutant by any person into navigable waters without a permit is illegal under Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.9. Section 309(g) of the Act, 33 U.S.C. § 1319(g)(1), allows EPA to assess administrative penalties whenever on the basis of any information EPA finds that any person has violated Section 301 of the Act, 33 U.S.C. § 1311.

3.10. Based on Respondent's Discharge Monitoring Reports (DMRs), EPA finds that Respondent discharged pollutants into navigable waters through Outfall 001 or 002 into the South Fork Teton River or into the Rexburg Canal each day since Respondent's NPDES Permit expired beginning on September 12, 2006. Respondent discharged pollutants into navigable waters without a Permit for over 1,709 days.

3.11 Under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act, as amended, 24 U.S.C. § 2461 note, 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.

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 \$30,000.

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, Missouri 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, Washington 98101

Office of Compliance and Enforcement
Attn: Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, Washington 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 CITY OF REXBURG, IDAHO:

Signature: Richard S. Woodland
Print Name: RICHARD S. WOODLAND

Title: MAYOR

DATED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

11/21/2011

Edward J. Kowalski
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.

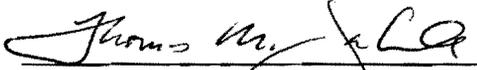
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 10th day of January, ~~2012~~, ~~2011~~.



THOMAS M. JAHNKE
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 Rexburg, Idaho, DOCKET NUMBER: CWA-10-2012-0013** was filed with the Regional Hearing Clerk on 1-10-,2012

On 1-10-,2012 the undersigned certifies that a true and correct copy of the document was delivered to:

Mary Stroh Queitzsch, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 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 1-10-,2012 to:

The Honorable Richard Woodland
Mayor of Rexburg
35 North 1st East
Rexburg, Idaho 83440

Stephen Zollinger
City Attorney
35 North 1st East
Rexburg, Idaho 83440

Dated this 10th day of January, 2012



Carol Kennedy
Regional Hearing Clerk
EPA Region 10