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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CWA-10-2010-0001
	)	
CITY OF KENDRICK,	)	CONSENT AGREEMENT AND
Kendrick, 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 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 in turn 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), 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 hereby issues, and the

1 City of Kendrick ("Kendrick") hereby agrees to issuance of, the Final Order contained in Part V  
2 of this CAFO.

3 **II. PRELIMINARY STATEMENT**

4 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO  
5 commences this proceeding which will conclude when the Final Order contained in Part V of  
6 this CAFO becomes effective.

7 2.2. Part III of this CAFO contains a concise statement of the factual basis for the  
8 alleged violations of the CWA, together with the specific provisions of the CWA and  
9 implementing regulations that Kendrick is alleged to have violated.

10 **III. ALLEGATIONS**

11 3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the "discharge of any  
12 pollutants by any person" except as authorized by a National Pollutant Discharge Elimination  
13 System ("NPDES") permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section  
14 504(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to  
15 include "any addition of any pollutant to navigable waters from any point source." "Navigable  
16 waters" are defined as "waters of the United States." 33 U.S.C. § 1362(7).

17 3.2. Kendrick is a municipality organized under the laws of the State of Idaho and,  
18 thus, is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19 3.3. Kendrick owns and operates a wastewater treatment facility ("Facility") located in  
20 Kendrick, Idaho.

21 3.4. Kendrick is authorized to discharge municipal wastewater containing pollutants  
22 from the Facility pursuant to NPDES Permit No. ID-002455-4 ("Permit"). The Permit expires  
23 on March 31, 2010.

1           3.5.     The Facility, which was under Kendrick's control at all times relevant to this  
2 action, discharges pollutants from Outfall 001, which is located at latitude 46° 36' 31" North and  
3 longitude 116° 39' 55" West. Outfall 001 is a "point source" within the meaning of Section  
4 502(14) of the CWA, 33 U.S.C. § 1362(14).

5           3.6.     The Facility discharges municipal wastewater containing pollutants into the  
6 Potlatch River. The Potlatch River is a "navigable water" within the meaning of Section 502(7)  
7 of the CWA, 33 U.S.C. § 1362(7), and is a "water of the United States" within the meaning of 40  
8 C.F.R. § 122.2.

9           3.7.     Sections I.A of the Permit establish effluent limitations for the discharge from  
10 Outfall 001. These effluent limitations include, but are not limited to, limits for biochemical  
11 oxygen demand ("BOD"), total suspended solids ("TSS"), total residual chlorine ("TRC"), pH  
12 and *Escherichia coli* ("*E. coli*").

13           3.8.     Section I.B. of the Permit establishes interim effluent limitations for TRC along  
14 with a compliance schedule for TRC. Section I.B.1 of the Permit requires Kendrick to come into  
15 compliance with the final TRC effluent limitations set forth in Section I.A of the Permit by  
16 September 1, 2008.

17           3.9.     Section II.B of the Permit requires Kendrick to summarize monitoring results for  
18 the Facility each month in a Discharge Monitoring Report ("DMR").

19           3.10.    Kendrick's DMRs from April 2005 to March 2009 indicate that the Facility had  
20 1,427 violations of the effluent limitations set forth in the Permit. When a permittee exceeds a  
21 monthly average effluent limit, the permittee is deemed to be in violation of that effluent limit  
22 each of the days of the month in which the violation occurred. When a permittee exceeds a  
23 weekly average effluent limit, the exceedance is counted as seven violations. When a permittee  
24 exceeds a daily maximum effluent limit, the exceedance is counted as one violation.

1 3.11. Section I.A. of the Permit contains an average monthly concentration effluent  
2 limit for BOD in discharges from the Facility of 30 mg/L. Between April 2005 and March 2009,  
3 Kendrick violated the average monthly concentration effluent limit for BOD a total of nine (9)  
4 months, totaling 277 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2005	31
January 2006	31
March 2006	31
May 2006	31
June 2006	30
January 2008	31
November 2008	30
December 2008	31
March 2009	31

13 3.12. Section I.A of the Permit contains an average weekly concentration effluent limit  
14 for BOD in discharges from the Facility of 45 mg/L. Between April 2005 and March 2009,  
15 Kendrick violated the average weekly concentration effluent limit for BOD a total of six (6)  
16 weeks, constituting 42 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2005	7
March 2006	7
June 2006	7
January 2008	7
November 2008	7
December 2008	7

23 3.13. Section I.A of the Permit contains an average monthly mass effluent limit for  
24 BOD in discharges from the Facility of 20 lbs/day. Between April 2005 and March 2009,  
25

1 Kendrick violated the average monthly mass effluent limit for BOD in March 2006, constituting  
2 31 violations.

3 3.14. Section I.A of the Permit contains a monthly average removal requirement for  
4 BOD in discharges from the Facility that requires that the monthly average effluent  
5 concentration does not exceed 15 percent (15%) of the monthly average influent concentration.  
6 Between April 2005 and March 2009, Kendrick violated the monthly average removal  
7 requirement for BOD a total of nineteen (19) months, constituting 575 violations. The violations  
8 are as follows:

Month of Violation	Number of Violations
May 2005	31
June 2005	30
December 2005	31
January 2006	31
February 2006	28
March 2006	31
May 2006	31
June 2006	30
December 2006	31
February 2007	28
March 2007	31
January 2008	31
February 2008	29
March 2008	31
May 2008	31
November 2008	30
December 2008	31
February 2009	28
March 2009	31

1 3.15. Section I.A of the Permit contains an average monthly concentration effluent limit  
2 for TSS in discharges from the Facility of 45 mg/L. Between April 2005 and March 2009,  
3 Kendrick violated the average monthly concentration effluent limit for TSS a total of four (4)  
4 months, constituting 124 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2006	31
May 2006	31
March 2008	31
March 2009	31

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10 3.16. Section I.A of the Permit contains an average weekly concentration effluent limit  
11 for TSS in discharges from the Facility of 65 mg/L. Between April 2005 and March 2009,  
12 Kendrick violated the average weekly concentration effluent limit for TSS a total of four (4)  
13 weeks, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2006	7
May 2006	7
March 2008	7

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18 3.17. Section I.A of the Permit contains an average weekly mass effluent limit for TSS  
19 in discharges from the Facility of 43 lbs/day. Between April 2005 and March 2009, Kendrick  
20 violated the average weekly mass effluent limit for TSS in March 2009, constituting 7 violations.

21 3.18. Section I.A of the Permit contains an average monthly mass effluent limit for TSS  
22 in discharges from the Facility of 30 lbs/day. Between April 2005 and March 2009, Kendrick  
23 violated the average monthly mass effluent limit for TSS in March 2006, constituting 31  
24 violations.  
25

1 3.19. Section I.A of the Permit contains a monthly average removal requirement for  
2 TSS in discharges from the Facility that requires that the monthly average effluent concentration  
3 does not exceed 35 percent (35%) of the monthly average influent concentration. Between April  
4 2005 and March 2009, Kendrick violated the monthly average removal requirement for TSS a  
5 total of seven (7) months, constituting 211 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2006	31
May 2006	31
February 2007	28
March 2007	31
March 2008	31
February 2009	28
March 2009	31

12  
13 3.20. Section I.A of the Permit contains an average monthly effluent limit for *E. coli*  
14 bacteria in discharges from the Facility of 126 colonies/100 mL. Between April 2005 and March  
15 2009, Kendrick violated the average monthly effluent limit for *E. coli* bacteria in July 2006,  
16 constituting 31 violations.

17 3.21. Section I.A of the Permit contains an instantaneous maximum limit for *E. coli*  
18 bacteria in discharges from the Facility of 406 colonies/100 mL. Between April 2005 and March  
19 2009, Kendrick violated the instantaneous maximum limit for *E. coli* bacteria a total of six (6)  
20 times, constituting six (6) violations.

Month of Violation	Number of Violations
June 2005	1
April 2006	1
May 2006	1
July 2006	1
January 2008	2

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2 3.22. Section I.B of the Permit contains an interim average monthly concentration  
3 effluent limit for TRC in discharges from the Facility of 0.5 mg/L. The interim average monthly  
4 concentration effluent limit was applicable until September 2008 when the Facility was required  
5 to be in compliance with the final effluent limitations set forth in Section I.A of the Permit.  
6 Between April 2005 and September 2008, Kendrick violated the interim average monthly  
7 concentration effluent limit for TRC a total of two (2) months, constituting 61 violations. The  
8 violations are as follows:

9

Month of Violation	Number of Violations
April 2005	30
May 2005	31

10  
11

12 3.23. Section I.B of the Permit contains an interim maximum daily concentration  
13 effluent limit for TRC in discharges from the Facility of 0.75 mg/L. The interim maximum daily  
14 concentration effluent limit was applicable until September 2008 when the Facility was required  
15 to be in compliance with the final effluent limitations set forth in Section I.A of the Permit.  
16 Between April 2005 and September 2008, Kendrick violated the interim maximum daily  
17 concentration effluent limit for TRC in May 2005, constituting one (1) violation.

18 3.24. Section I.A of the Permit contains a maximum daily concentration effluent limit  
19 for TRC in discharges from the Facility of 0.018 mg/L. This maximum daily concentration  
20 effluent limit went into effect in September 2008. Between September 2008 and March 2009,  
21 Kendrick violated the maximum daily concentration effluent limit a total of three (3) times,  
22 constituting three (3) violations. The violations are as follows:

23

Month of Violation	Number of Violations
November 2008	1

24  
25

Month of Violation	Number of Violations
January 2009	1
March 2009	1

3.25. Section I.A of the Permit contains a maximum daily mass effluent limit for TRC in discharges from the Facility of 0.012 lbs/day. This maximum daily mass effluent limit went into effect in September 2008. Between September 2008 and March 2009, Kendrick violated the maximum daily mass effluent limit in March 2009, constituting one (1) violation.

3.26. Section I.A of the Permit requires that the pH in discharges from the Facility be in the range of 6.5 – 9.0 standard units. Between April 2005 and March 2009, Kendrick violated the pH limit a total of five (5) times, constituting five (5) violations. The violations are as follows:

Month of Violation	Number of Violations
May 2006	1
June 2006	1
January 2008	1
January 2009	1
February 2009	1

3.27. Under Section 309(g)(1) of the CWA, 33 U.S.C § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person ... has violated any permit condition or limitations ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit violations alleged for the Facility constitute violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Kendrick is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum amount of \$177,500.

1 **IV. CONSENT AGREEMENT**

2 4.1. Kendrick stipulates that EPA has jurisdiction over the subject matter alleged  
3 herein.

4 4.2. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA  
5 has taken into account the nature, circumstances, extent, and gravity of the alleged violations as  
6 well as Kendrick's economic benefit of noncompliance, ability to pay, and other relevant factors.  
7 After considering all of these factors, EPA has determined and Kendrick agrees that an  
8 appropriate penalty to settle this action is in the amount of Three Thousand Five Hundred  
9 Dollars (\$3,500.00).

10 4.3. Kendrick neither admits nor denies the specific factual allegations contained in  
11 Part III of this CAFO.

12 4.4. Kendrick consents to issuance of the Final Order set forth in Part V, below, and  
13 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days of  
14 the effective date of the Final Order.

15 4.5. Payment under this CAFO shall be made by cashier's check or certified check  
16 payable to the order of "Treasurer, United States of America" and delivered to the following  
17 address:

18 U.S. Environmental Protection Agency  
19 Fines and Penalties  
20 Cincinnati Finance Center  
21 PO Box 979077  
22 St. Louis, MO 63197-9000

23 Kendrick shall note on the check the title and docket number of this action.

24 4.6. Kendrick shall serve photocopies of the check described in Paragraph 4.5, above,  
25 on the Regional Hearing Clerk and EPA Region 10 Office of Compliance and Enforcement at  
the following addresses:

1 Regional Hearing Clerk  
2 U.S. Environmental Protection Agency  
3 Region 10, MS-ORC-158  
4 1200 Sixth Avenue, Suite 900  
5 Seattle, WA 98101

6 Office of Compliance and Enforcement  
7 Attn: David Domingo  
8 U.S. Environmental Protection Agency  
9 Region 10, MS OCE-133  
10 1200 Sixth Avenue, Suite 900  
11 Seattle, WA 98101

12 4.7. If Kendrick fails to pay the penalty assessed by this CAFO in full by the due date  
13 set forth in Paragraph 4.4, above, the entire unpaid balance of penalty and accrued interest shall  
14 become immediately due and owing. If Kendrick fails to pay the penalty assessed, Kendrick  
15 may be subject to a civil action to collect the assessed penalty under the CWA, together with  
16 interest, fees, costs, and additional penalties described below. In any collection action, the  
17 validity, amount, and appropriateness of the penalty shall not be subject to review.

18 4.8. If Kendrick fails to pay any portion of the penalty assessed by this CAFO in full  
19 by the due date set forth in Paragraph 4.4, above, Kendrick shall be responsible for payment of  
20 the amounts described below:

21 4.8.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.  
22 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate  
23 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from  
24 the effective date of the Final Order set forth in Part V, below, provided, however,  
25 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.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Kendrick fails to pay

1 on a timely basis the amount of the penalty set forth in Paragraph 4.3, above,  
2 Kendrick shall pay (in addition to any assessed penalty and interest) attorneys fees  
3 and costs for collection proceedings and a quarterly nonpayment penalty for each  
4 quarter during which such failure to pay persists. Such nonpayment penalty shall  
5 be in an amount equal to twenty percent (20%) of the aggregate amount of  
6 Kendrick's penalties and nonpayment penalties which are unpaid as of the  
7 beginning of such quarter.

8 4.9. The penalty described in Paragraph 4.2, above, including any additional costs  
9 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA  
10 and shall not be deductible for purposes of federal taxes.

11 4.10. The undersigned representative of Kendrick certifies that he or she is fully  
12 authorized to enter into the terms and conditions of this CAFO and to bind Kendrick to this  
13 document.

14 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own  
15 costs in bringing or defending this action.

16 4.12. Kendrick expressly waives any rights to contest the allegations and waives any  
17 right to appeal the Final Order set forth in Part V, below.

18 4.13. The provisions of this CAFO shall bind Kendrick and its agents, servants,  
19 employees, successors, and assigns.

20 4.14. The above provisions are STIPULATED AND AGREED upon by Kendrick and  
21 EPA.

1 DATED:

CITY OF KENDRICK:

2

3

8-24-09

Dale G. Lister

4

Signature

5

Print Name: DALE G. LISTER

6

Title: MAYOR

7

DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

8

9

10

EDWARD J. KOWALSKI

11

Director

12

Office of Compliance and Enforcement

13

For Complainant

14

V. FINAL ORDER

15

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

18

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

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DATED:

CITY OF KENDRICK:

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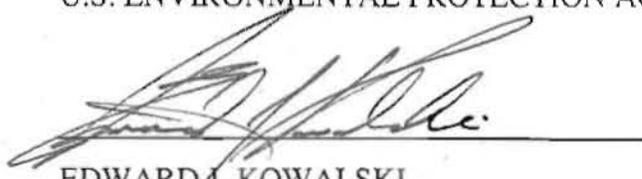
Signature  
Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

8/21/08



EDWARD J. KOWALSKI  
Director  
Office of Compliance and Enforcement  
For Complainant

**V. FINAL ORDER**

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

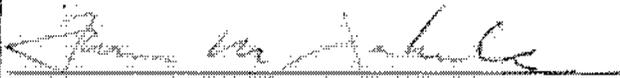
5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States or pursue appropriate injunctive or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

1           5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and  
2 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the  
3 opportunity to consult with EPA regarding the assessment of the administrative civil penalty  
4 against Kendrick.

5           5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA  
6 has published public notice of its intent to assess an administrative penalty against Kendrick and  
7 to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have  
8 elapsed since the issuance of this public notice, and EPA has received no petition to set aside the  
9 Consent Agreement contained herein.

10           5.5. This Final Order shall become effective upon filing.

11  
12 SO ORDERED this 17<sup>th</sup> day of October, 2009.

13  
14   
15 THOMAS M. JAHNKE  
16 Regional Judicial Officer  
17 U.S. Environmental Protection Agency  
18 Region 10  
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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, DOCKET NO.: CWA-10-2010-0001** was filed with the Regional Hearing Clerk on October 15, 2009.

On October 15, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Weber, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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 receipt on October 15, 2009, to:

Mayor Dale G. Lisher  
City of Kendrick  
P.O. Box 195  
Kendrick, ID 83537

DATED this 15<sup>th</sup> day of October 2009.



Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10