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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2013-0006
)	
City of Pierce, 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 or Act), 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 Pierce (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, *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 wastewater treatment plant (Facility) located in Pierce, Idaho. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. Respondent is also a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

3.4. NPDES Permit ID-002020-6 (WWTP Permit) was issued to Respondent on March 5, 2004. The WWTP Permit became effective on May 1, 2004 and expired on April 30, 2009. Respondent submitted a timely and complete application to renew the WWTP Permit, and the permit was administratively extended. The WWTP Permit is by the administrative extension effective and enforceable until a new permit is issued.

3.5. 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 46° 29' 32" North and longitude 115° 48' 02" West. Outfall 001 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.6. The Facility discharges domestic wastewater containing pollutants into Orofino Creek which flows into the Clearwater River; the Clearwater River flows into the Snake River. The Clearwater River is protected by the State of Idaho for cold water communities, primary contact recreation, and salmonid spawning. Orofino Creek and the Clearwater and Snake Rivers are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are "waters of the United States" within the meaning of 40 C.F.R. § 122.2.

3.7. Section I.A of the WWTP 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), *Escherichia coli* (*E. coli*) bacteria, and pH.

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

3.9. Respondent's DMRs from August 2007 to June 2012 indicate that the Facility had 2,303 violations of the effluent limitations set forth in the Permit. Exceedance of a monthly average effluent limit is counted as one violation for each day of the month in which the exceedance occurred. Exceedance of a weekly average effluent limit is counted as one violation

for each day of the week in which the exceedance occurred. Exceedance of a daily maximum effluent limit is counted as one violation.

3.10. Section I.A. of the Permit contains an average monthly concentration effluent limit for BOD of 30 mg/L. Between August 2007 and June 2012, Respondent violated the average monthly concentration effluent limit for BOD in the month of September 2011, constituting 30 violations.

3.11. Section I.A. of the Permit contains a monthly average removal requirement for BOD under which the monthly average effluent concentration must not exceed 85% of the monthly average influent concentration. Between August 2007 and June 2012, Respondent violated the monthly average removal requirement for BOD three times, constituting 90 violations.

3.12. Section I.A. of the Permit contains an average monthly concentration effluent limit for TSS of 30 mg/L. Between August 2007 and June 2012, Respondent violated the monthly concentration effluent limit for TSS two times, constituting 61 violations.

3.13. Section I.A. of the Permit contains an average monthly mass effluent limit for TSS of 75 lbs/day. Between August 2007 and June 2012, Respondent violated the average monthly mass effluent for TSS in the month of August 2011, constituting 31 violations.

3.14. Section I.A. of the Permit contains a monthly average removal requirement for TSS under which the monthly average effluent concentration must not exceed 85% of the monthly average influent concentration. Between August 2007 and June 2012, Respondent violated the monthly average removal requirement for TSS six times, constituting 183 violations.

3.15. Section I.A. of the Permit contains an average weekly concentration effluent limit for TSS of 45 mg/L. Between March August 2007 and June 2012, Respondent violated the average weekly concentration effluent limit for TSS two times, constituting 14 violations.

3.16. Section I.A. of the Permit contains an average weekly mass effluent limit for TSS of 113 lbs/day. Between August 2007 and June 2012, Respondent violated the average weekly mass effluent limit for TSS two times, constituting 14 violations.

3.17. Section I.A. of the Permit contains an average monthly concentration effluent limit for TRC of 0.10 mg/L. Between August 2007 and June 2012, Respondent violated the average monthly concentration effluent limit for TRC 23 times, constituting 699 violations.

3.18. Section I.A. of the Permit contains an average monthly mass effluent limit for TRC of 0.25 lbs/day. Between August 2007 and June 2012, Respondent violated the average monthly mass effluent limit for TRC 25 times, constituting 761 violations.

3.19. Section I.A. of the Permit contains a daily maximum concentration effluent limit for TRC of 0.10 mg/L. Between August 2007 and June 2012, Respondent violated the daily maximum concentration effluent limit for TRC 37 times, constituting 37 violations.

3.20. Section I.A. of the Permit contains a daily maximum mass effluent limit for TRC of 0.30 lbs/day. Between August 2007 and June 2012, Respondent violated the daily maximum mass concentration effluent limit for TRC 28 times, constituting 28 violations.

3.21. Section I.A. of the Permit contains an average monthly effluent limit for *E. coli* bacteria of 126 colonies/100 mL. Between August 2007 and June 2012, Respondent violated the average monthly effluent limit for *E. coli* bacteria 11 times, constituting 331 violations.

3.22. Section I.A. of the Permit contains an instantaneous maximum limit for *E. coli* bacteria of 406 colonies/100 mL. Between August 2007 and June 2012, Respondent violated the instantaneous maximum limit for *E. coli* bacteria 16 times, constituting 16 violations.

3.23. Section I.A. of the Permit requires a pH range of 6.5 – 9.0 standard units. Between August 2007 and June 2012, Respondent violated the pH limit eight times, constituting eight violations.

3.24. 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 Class I or Class II civil penalty.

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 **\$ 4,800.**

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: Stacey Erickson
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:

10/12/2012

FOR RESPONDENT:

Carmen R Syed

Signature

Print Name: Carmen R Syed

Title: Mayor

DATED:

10/24/2012

FOR COMPLAINANT:

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.

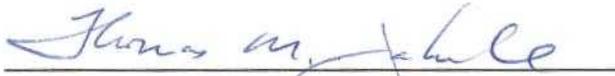
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable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



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 the Matter of : City of Pierce, Idaho Docket No.: CWA-10-2013-0006**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

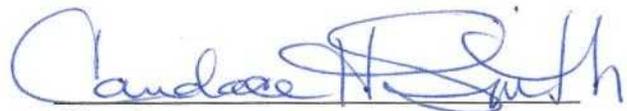
The undersigned certifies that a true and correct copy of the document was delivered to:

Mary Stroh Queitzsch
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 to:

The Honorable Carmen R. Syed
Mayor of Pierce
404 South Main Street
P.O. Box 356
Pierce, ID 83546

DATED this 12th day of **December**, 2012



Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

