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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2012-0044

AVISTA CORPORATION,  
Respondent.

**CONSENT AGREEMENT AND  
FINAL ORDER**

**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 Avista Corporation (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. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. 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.” Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.”

3.2. Respondent is a corporation organized under the laws of Washington and therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.3. Respondent owns and operates a wastewater treatment system (Facility) located at the Cabinet Gorge Hydroelectric Development in Clark Fork, Idaho.

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 48.1192156° and longitude 116.1439098°. 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 sanitary wastewater containing pollutants from Outfall

001 into Clark Fork River, Idaho. The Clark Fork River is an interstate water which is susceptible to use in interstate and foreign commerce. Accordingly, the Clark Fork River is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and “waters of the United States” within the meaning of 40 C.F.R. § 122.2.

3.6. By discharging sanitary 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).

3.7. During the times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES Permit ID-0027995 (“Permit”). The Permit became effective on January 5, 2002, and expired on January 5, 2007. It is currently administratively extended pursuant to 40 C.F.R. § 122.6.

3.8. Section I.A of the Permit establishes effluent limitations for the discharge from Outfall 001 and includes limits for Biochemical Oxygen Demand (BOD), Total Residual Chlorine (TRC), pH, Total Suspended Solids (TSS), Fecal Coliform, and *Escherichia coli* (*E. coli*).

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

3.10. Respondent’s DMRs from January 2007 to October 2011 indicate that the Facility had 1,314 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. An exceedance of a maximum daily effluent limit is counted as one violation.

3.11. Section I.A. of the Permit contains an average monthly concentration effluent limit for BOD of 30 lbs/day. From January 2007 to October 2011, Respondent violated the average monthly concentration effluent limit for BOD three times, constituting 92 violations. The violations are as follows:

Month of Violation	Number of Violations
July 08	31
January 10	31
April 2011	30

3.12. Section I.A. of the Permit contains an average monthly effluent concentration limit for TRC of 0.5 mg/l. From January 2007 to October 2011, Respondent violated the average monthly effluent concentration limit for TRC two times, constituting 61 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2008	31
April 2009	30

3.13. Section I.A. of the Permit contains an instantaneous effluent pH range limit of 6.5 to 9.0. From January 2007 to October 2011, Respondent violated the instantaneous effluent pH range limit 10 times, constituting 10 violations. The violations are as follows:

Month of Violation	Number of Violations
September 2007	1
February 2008	1
April 2008	1

Month of Violation	Number of Violations
June 2008	1
September 2008	1
October 2008	1
January 2009	1
June 2009	1
October 2010	1
November 2010	1

3.14. Section I.A. of the Permit contains an average monthly concentration effluent limit for TSS of 30 mg/l. From January 2007 to October 2011, Respondent violated the average monthly concentration effluent limit for TSS 22 times, constituting 670 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2007	31
June 2007	30
August 2007	31
September 2007	30
November 2007	30
December 2007	31
April 2008	30
July 2008	31
August 2008	31
October 2008	31
November 2008	30
January 2009	31
February 2009	28
March 2009	31
May 2009	31
August 2009	31

Month of Violation	Number of Violations
September 2009	30
October 2009	31
December 2009	31
January 2010	31
February 2010	28
March 2010	31

3.15. Section I.A. of the Permit contains an average weekly concentration effluent limit for TSS of 45 mg/l. From January 2007 to October 2011, Respondent violated the average weekly concentration effluent limit for TSS 18 times, constituting 126 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2007	7
August 2007	7
November 2007	7
December 2007	7
April 2008	7
July 2008	7
August 2008	7
October 2008	7
November 2008	7
January 2009	7
February 2009	7
March 2009	7
May 2009	7
September 2009	7
October 2009	7
January 2010	7
February 2010	7

Month of Violation	Number of Violations
March 2010	7

3.16. Section I.A. of the Permit contains an average weekly concentration effluent limit for Fecal Coliform. From January 2007 to October 2011, Respondent violated the average weekly concentration effluent limit for Fecal Coliform six times, constituting 42 violations. The violations are as follows:

Month of Violation	Number of Violations
October 2008	7
August 2009	7
June 2010	7
July 2010	7
March 2011	7
October 2011	7

3.17. Section I.A. of the Permit contains an average monthly effluent count limit for *E. coli* of 126/100ml. From January 2007 to October 2011, Respondent violated the average monthly effluent count limit for *E. coli* ten times, constituting 306 violations. The violations are as follows:

Month of Violation	Number of Violations
August 2007	31
October 2008	31
August 2009	31
February 2010	28
March 2010	31
June 2010	30
July 2010	31

Month of Violation	Number of Violations
March 2011	31
May 2011	31
October 2011	31

3.18. Section I.A. of the Permit contains daily maximum effluent count limit for *E. coli* of 406/100ml. From January 2007 to October 2011, Respondent violated the daily maximum effluent count limit for *E. coli* three times, constituting three violations. The violations are as follows:

Month of Violation	Number of Violations
August 2007	1
March 2011	1
October 2011	1

3.19. Section II.G. of the Permit requires that violations of a maximum daily discharge limitation for any pollutant listed in the permit be reported to the EPA by telephone within 24 hours from the time the permittee becomes aware of the circumstances. From January 2007 to October 2011, Respondent violated the 24-hour maximum daily discharge limitation reporting requirement for *E. coli* two times, constituting two violations. The violations are as follows:

Month of Violation	Number of Violations
August 2007	1
March 2011	1

3.20. Section II.G. of the Permit requires a written submission for violations of a maximum daily discharge limitation for any pollutant listed in the permit be sent to the EPA

within five days from the time the permittee becomes aware of the circumstances. From January 2007 to October 2011, Respondent violated the maximum daily discharge limitation written submission requirement for *E. coli* two times, constituting two violations. The violations are as follows:

Month of Violation	Number of Violations
August 2007	1
March 2011	1

3.21. Under CWA Section 309(g)(1), 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 limitation ... in a permit issued” pursuant to CWA Section 402, 33 U.S.C. § 1342. Consequently under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, 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 \$172,000.

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, 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

Chae Park  
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. For the purpose of this proceeding only, 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 successors and assigns.

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

DATED:

12/13/11

AVISTA CORPORATION:

Dick Storro

Dick Storro  
Vice President, Energy Resources

DATED:

12/16/11

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

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 24<sup>th</sup> day of February, 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 **In the Matter of Avista Corporation**, Docket No.: **CWA-10-2012-0044**, was filed with the Regional Hearing Clerk on 2-24-2012

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

Endre Szalay, Esquire  
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:

Avista Corporation  
1411 East Mission Avenue  
P.O. Box 3727  
Spokane, Washington 99220-3727

Kevin J. Beaton  
Attorney for Avista Corporation  
Stoel Rives LLP  
101 S. Capitol Boulevard  
Suite 1900  
Boise, Idaho 83702-7705

DATED this 2-24-2012

Sharon Eng  
Signature  
Print Name Sharon Eng  
EPA Region 10