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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
)
McCollum Enterprises, Limited Partnership)
)
)
Respondent.)

DOCKET NO. CWA-10-2014-0001

**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” 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 McCollum Enterprises, Limited Partnership. (“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 Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, 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.

3.2 Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“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.

3.3 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.” The term “navigable waters” is defined as “waters of the United States.” 33 U.S.C. § 1362(7). 40 C.F.R. § 122.2 defines “waters of the United States” to include waters that are currently used,

were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters.

3.4. Respondent is a limited partnership duly organized and existing under the laws of the State of Idaho. Respondent is thus a “person” under Act Section 502(5), 33 U.S.C. § 1362(5).

3.5. Respondent owns and/or operates an aquaculture facility known as the Canyon Springs Fish Farm (“Facility”) located near Twin Falls, Idaho.

3.6. At all times relevant to this action, Respondent was authorized to discharge wastewater from the Facility pursuant to the 2007 NPDES General Permit for Aquaculture Facilities in Idaho, Tracking No. IDG130104 (“Permit”). Respondent obtained coverage under the Permit on December 1, 2007.

3.7. The Facility discharges pollutants from Outfall SUM-A into Snake River. Outfall SUM-A is a “point source” as defined in 40 C.F.R. § 122.2.

3.8. The Snake River is an interstate water body that flows into the Columbia River, which flows into the Pacific Ocean. As such, the Snake River is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.9. Respondent’s DMRs from June 2008 to March 2012 indicate that the Facility had 551 violations of the effluent limits set forth in the Permit. When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the month in which the exceedance occurred.

3.10. Section II.A.2.b. of the Permit contains a monthly average effluent limit for total suspended solids (“TSS”) of 317.8 pounds per day. Between June 2008 and March 2012, Respondent violated this limit ten (10) times, constituting three hundred-five (305) violations. The violations are as follows:

Month of Violation	Number of Violations
June 2008	30
December 2008	31
June 2009	30
December 2009	31
March 2010	31
June 2010	30
March 2011	31
June 2011	30
September 2011	30
March 2012	31

3.11. Section II.A.2.b. of the Permit contains a daily maximum limit for TSS of 893 pounds per day. In March 2011, Respondent violated this limit one (1) time, constituting one (1) violation.

3.12. Section II.A.2.b. of the Permit contains a monthly average effluent limit for total phosphorus ("TP") of 7.3 pounds per day. Between March 2008 and June 2011, Respondent violated this limit eight (8) times, constituting two hundred forty-four (244) violations. The violations are as follows:

Month of Violation	Number of Violations
March 2008	31
September 2008	30
December 2008	31
June 2010	30
September 2010	30
December 2010	31
March 2011	31
June 2011	30

3.13. Section II.A.2.b. of the Permit contains a daily maximum limit for TP of 15.4 pounds per day. In September 2008, Respondent violated this limit one (1) time, constituting one (1) violation.

3.14 Section II.D. of the Permit requires the Facility to monitor discharges and follow guidance in Appendix D of the permit in calculating loads. In September 2009, Respondent reported a negative value for total phosphorus loading. Labs results for total phosphorus concentrations in that month per Appendix D guidance yield a positive value. Respondent therefore failed to properly calculate loading values for total phosphorus, constituting one (1) violation.

3.15. Section III.E.4.f. of the Permit requires the Facility to implement procedures to collect, store, and dispose of wastes, such as biological wastes, in accordance with IDAPA §02.04.14.030. In April 2012, Respondent disposed of fish mortalities in shallow, exposed pits adjacent to a public road fronting their property. This disposal practice violates IDAPA §02.40.030. Respondent therefore failed to properly dispose of fish mortalities, constituting one (1) violation.

3.16. Section IV.D. of the Permit requires the Facility to submit an annual report by January 20th of each year. Respondent submitted its 2008 report on February 11, 2009 and its 2011 report was not received. Therefore, Respondent failed to submit timely annual reports in 2008 and 2011, constituting two (2) violations.

3.17. Section V.B. of the Permit requires the Facility to submit DMRs that are postmarked by the 20th day of the month. In February 2012, Respondent failed to submit their DMR in a timely manner, constituting one (1) violation.

3.18. Section V.H. of the Permit requires the Facility to report all instances of noncompliance not required to be reported within 24 hours, including effluent limitation exceedances, at the time the discharge monitoring reports (DMRs) are submitted to EPA.

Between April 2008 and April 2012, Respondent failed to report the exceedance of an effluent limit in the DMRs on fourteen (14) occasions, constituting fourteen (14) violations. The violations are as follows:

Month of Violation	Number of Violations
April 2008	1
July 2008	1
October 2008	1
January 2009	1
July 2009	1
January 2010	1
April 2010	1
July 2010	1
October 2010	1
January 2011	1
April 2011	1
July 2011	1
October 2012	1
April 2012	1

3.19 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...have violated any permit condition or limitation...in a permit issued” pursuant to Section 402 of the CWA, 33.U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent 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 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 TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 in three payments, including interest:

- (1) Within 30 days of the effective date of the Final Order of this CAFO, \$5,000;
- (2) Within 12 months of the effective date of the Final Order, \$10,200;
- (3) Within 24 months of the effective date of the Final Order, \$10,100.

4.5. Payments 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(s) the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check(s) 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

Derek Schruhl
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. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

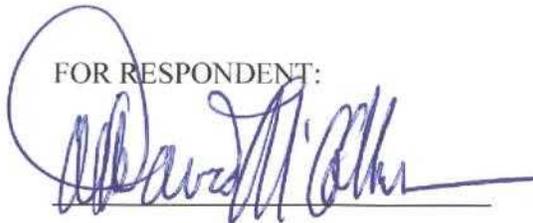
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

9/19/2013

FOR RESPONDENT:

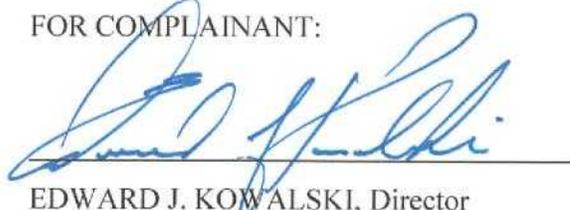


David McCollum
McCollum Enterprises, Limited Partnership

DATED:

10/23/2013

FOR COMPLAINANT:



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.

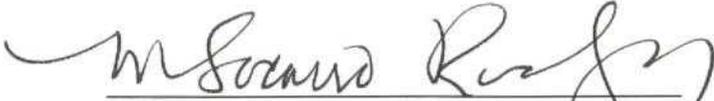
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 4th day of November, 2013.



Regional Judicial Officer
~~M. SOCCORO RODRIGUEZ~~
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: McCollum Enterprises, Limited Partnership.**, **Docket No.: CWA-10-2014-0001**, was filed, and served as follows, on the signature date below.

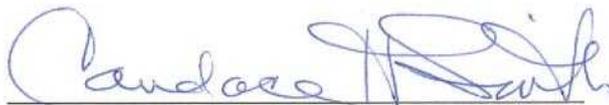
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Mark A. Ryan
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

David McCollum
McCollum Enterprises
P.O Box 5492
Twin Falls, Idaho 83303

5th of November 2013
Dated


Candace H. Smith
Regional Hearing Clerk
EPA Region 10