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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CWA-10-2009-0029
	)	
	)	
CITY OF COUNCIL,	)	<b>CONSENT AGREEMENT AND</b>
Council, Idaho	)	<b>FINAL ORDER</b>
	)	
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 re delegated 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 Council ("Council") hereby agrees to issuance of, the Final Order contained in Part V of  
2 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 violation of the CWA, together with specific provisions of the CWA and implementing  
9 regulations that Council 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  
14 502(12) of the CWA, 33 U.S.C § 1362(12), defines the term "discharge of a pollutant" to include  
15 "any addition of any pollutant to navigable waters from any point source." "Navigable waters"  
16 are defined as "waters of the United States." 33 U.S.C. § 1362(7).

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

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

21 3.4. During the times relevant to this action, Council was authorized to discharge  
22 municipal wastewater containing pollutant from the Facility pursuant to NPDES Permit No. ID-  
23 002008-7 ("Permit"). The Permit became effective on May 1, 2004 and expires on April 30,  
24 2009.

1           3.5.    The Facility, which was under Council's control at all times relevant to this  
2 action, discharges pollutants from Outfall 001, which is located at latitude 44° 43' 15" North and  
3 longitude 116° 26' 59" 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 Weiser River. The Weiser River flows into the Snake River. The Snake River is a "navigable  
7 water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a "water of  
8 the United States" within the meaning of 40 C.F.R. § 122.2. Therefore, the Weiser River is a  
9 "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a  
10 "water of the United States" within the meaning of 40 C.F.R. § 122.2.

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

14           3.8.    Part II.B. of the Permit requires Council to summarize monitoring results for the  
15 Facility each month in a Discharge Monitoring Report ("DMR").

16           3.9.    Council's DMRs from May 2004 to March 2008 indicate that the Facility had  
17 4,229 violations of the effluent limits set forth in the Permit. When a permittee exceeds a  
18 monthly average effluent limit, the permittee is deemed to be in violation of the effluent limits  
19 each of the days of the month in which the violation occurred. When a permittee exceeds a  
20 weekly average effluent limit, the exceedance is counted as seven violations. When a permittee  
21 exceeds a daily maximum effluent limit, the exceedance is counted as one violation.

22           3.10.   Section I.A. of the Permit contains a monthly average mass effluent limit for total  
23 residual chlorine in discharges from the Facility of 0.3 lbs/day. Between May 2004 and March  
24  
25

1 2008, Council violated the monthly average mass effluent limit for total residual chlorine a total  
2 of seventeen (17) months, constituting 514 violations. The violations are as follows:

Month	Number of Violations
May 2004	31
June 2004	30
July 2004	31
August 2004	31
September 2004	30
December 2004	31
February 2005	28
March 2005	31
April 2005	30
May 2005	31
December 2005	31
February 2006	28
March 2006	31
April 2006	30
December 2006	31
February 2007	28
March 2008	31

3.11. Section I.A. of the Permit contains a monthly average concentration effluent limit  
for total residual chlorine in discharges from the Facility of 0.1 mg/L. Between May 2004 and  
March 2008, Council violated the monthly average concentration effluent limit for total residual  
chlorine a total of fifteen (15) months, constituting 451 violations. The violations are as follows:

Month	Number of Violations
May 2004	31
June 2004	30
July 2004	31
August 2004	31

Month of Violation	Number of Violations
September 2004	30
November 2004	30
December 2004	31
January 2005	31
February 2005	28
March 2005	31
April 2005	30
December 2005	31
February 2006	28
April 2006	30
February 2007	28

3.12. Section I.A. of the Permit contains a daily maximum mass effluent limit for total residual chlorine in discharges from the Facility of 0.7 lb/day. Between May 2004 and March 2008, Council violated the daily maximum mass effluent limit for total residual chlorine a total of twenty-three (23) times, constituting twenty-three (23) violations. The violations are as follows:

Month of Violation	Number of Violations
May 2004	1
June 2004	1
July 2004	1
August 2004	1
September 2004	1
October 2004	1
November 2004	1
December 2004	1
February 2005	1
March 2005	1
April 2005	1
May 2005	1

Month of Violation	Number of Violations
December 2005	1
January 2006	1
February 2006	1
March 2006	1
April 2006	1
November 2006	1
December 2006	1
February 2007	1
April 2007	1
May 2007	1
March 2008	1

3.13. Section I.A. of the Permit contains a daily maximum concentration effluent limit for total residual chlorine in discharges from the Facility of 0.2 mg/L. Between May 2004 and March 2008, Council violated the daily maximum concentration effluent limit for total residual chlorine a total of eight (8) times, constituting eight (8) violations. The violations are as follows:

Month of Violation	Number of Violations
May 2004	1
June 2004	1
July 2004	1
August 2004	1
September 2004	1
October 2004	1
February 2005	1
February 2007	1

3.14. Section I.A. of the Permit contains a monthly average mass effluent limit for BOD in discharges from the Facility of 100 lb/day. Between May 2004 and March 2008,

1 Council violated the monthly average mass effluent limit for BOD a total of five (5) times,  
2 constituting 155 violations. The violations are as follows:

Month of Violation	Number of Violations
July 2004	31
March 2005	31
May 2005	31
January 2006	31
March 2006	31

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8 3.15. Section I.A. of the Permit contains a monthly average concentration effluent limit  
9 for BOD in discharges from the Facility of 30 mg/L. Between May 2004 and March 2008,  
10 Council violated the monthly average concentration effluent limit for BOD a total of nine (9)  
11 times, constituting 277 violations. The violations are as follows:

Month of Violation	Number of Violations
July 2004	31
August 2004	31
October 2004	31
March 2005	31
August 2005	31
September 2005	30
October 2005	31
October 2006	31
November 2006	30

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20 3.16. Section I.A. of the Permit contains a weekly average concentration effluent limit  
21 for BOD in discharges from the Facility of 45 mg/L. Between May 2004 and March 2008,  
22 Council violated the weekly average concentration effluent limit for BOD a total of two (2)  
23 times, constituting fourteen (14) violations. The violations are as follows:  
24  
25

Month of Violation	Number of Violations
July 2004	7
October 2004	7

3.17. Section I.A. of the Permit contains a monthly average removal requirement for BOD in discharges from the Facility that requires that the monthly average effluent concentration shall not exceed 15 percent (15%) of the monthly average influent concentration. Between May 2004 and March 2008, Council violated the monthly average removal requirement for BOD a total of twenty-three (23) times, constituting 699 violations. The violations are as follows:

Month of Violation	Number of Violations
July 2004	31
August 2004	31
September 2004	30
October 2004	31
December 2004	31
January 2005	31
February 2005	28
March 2005	31
April 2005	30
May 2005	31
August 2005	31
September 2005	30
October 2005	31
November 2005	30
January 2006	31
March 2006	31
April 2006	30
May 2006	31
October 2006	31

Month of Violation	Number of Violations
November 2006	30
February 2007	28
April 2007	30
November 2007	30

3.18. Section I.A. of the Permit contains a monthly average mass effluent limit for TSS in discharges from the Facility of 100 lb/day. Between May 2004 and March 2008, Council violated the monthly average mass effluent limit for TSS a total of eleven (11) times, constituting 334 violations. The violations are as follows:

Month of Violation	Number of Violations
July 2004	31
August 2004	31
March 2005	31
May 2005	31
November 2005	30
February 2006	28
March 2006	31
April 2006	30
December 2006	31
April 2007	30
November 2007	30

3.19. Section I.A. of the Permit contains a monthly average concentration effluent limit for TSS in discharges from the Facility of 30 mg/L. Between May 2004 and March 2008, Council violated the monthly average concentration effluent limit for TSS a total of seventeen (17) times, constituting 518 violations. The violations are as follows:

Month of Violation	Number of Violations
July 2004	31

Month	Number of Violations
August 2004	31
September 2004	30
October 2004	31
February 2005	28
March 2005	31
July 2005	31
August 2005	31
September 2005	30
October 2005	31
November 2005	30
July 2006	31
August 2006	31
October 2006	31
November 2006	30
April 2007	30
November 2007	30

3.20. Section I.A. of the Permit contains a weekly average mass effluent limit for TSS in discharges from the Facility of 150 lb/day. Between May 2004 and March 2008, Council violated the weekly average mass effluent limit for TSS a total of four (4) times, constituting twenty-eight (28) violations. The violations are as follows:

Month of Violation	Number of Violations
August 2004	7
March 2005	7
March 2006	7
April 2007	7

3.21. Section I.A. of the Permit contains a weekly average concentration effluent limit for TSS in discharges from the Facility of 45 mg/L. Between May 2004 and March 2008,

1 Council violated the weekly average concentration effluent limit for TSS a total of thirteen (13)  
2 times, constituting ninety-one (91) violations. The violations are as follows:

Month of Violation	Number of Violations
July 2004	7
August 2004	7
September 2004	7
October 2004	7
March 2005	7
July 2005	7
August 2005	7
September 2005	7
October 2005	7
August 2006	7
October 2006	7
November 2006	7
April 2007	7

14 3.22. Section I.A. of the Permit contains a monthly average removal requirement for  
15 TSS in discharges from the Facility that requires that the monthly average effluent concentration  
16 shall not exceed 15 percent (15%) of the monthly average influent concentration. Between May  
17 2004 and March 2008, Council violated the monthly average removal requirement for TSS a  
18 total of twenty-eight (28) times, constituting 854 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2004	31
July 2004	31
August 2004	31
September 2004	30
October 2004	31
December 2004	31
March 2005	31

Month of Violation	Number of Violations
April 2005	30
May 2005	31
July 2005	31
August 2005	31
September 2005	30
October 2005	31
November 2005	30
December 2005	31
January 2006	31
February 2006	28
March 2006	31
April 2006	30
May 2006	31
July 2006	31
August 2006	31
October 2006	31
November 2006	30
December 2006	31
February 2007	28
April 2007	30
November 2007	30

3.23. Section I.A. of the Permit contains a monthly average effluent limit for E. coli bacteria in discharges from the Facility of 126 colonies/100 mL. Between May 2004 and March 2008, Council violated the monthly average effluent limit for E. coli bacteria a total of eight (8) times, constituting 244 violations. The violations are as follows:

Month of Violation	Number of Violations
July 2004	31
August 2004	31
September 2004	30

Month of Violation	Number of Violations
October 2005	31
January 2006	31
March 2006	31
October 2006	31
February 2007	28

3.24. Section I.A. of the Permit contains a daily maximum effluent limit for E. coli bacteria in discharges from the Facility of 406 colonies/100 mL. Between May 2004 and March 2008, Council violated the daily maximum effluent limit for E. coli bacteria a total of sixteen (16) times, constituting sixteen (16) violations. The violations are as follows:

Month of Violation	Number of Violations
August 2004	1
September 2004	1
November 2004	1
December 2004	1
January 2005	1
October 2005	1
November 2005	1
December 2005	1
January 2006	1
February 2006	1
March 2006	1
October 2006	1
November 2006	1
December 2006	1
January 2007	1
February 2007	1

3.25. Section I.A. of the Permit contains a daily range for pH in discharges from the Facility of 6.5 - 9.0 standard units. Between May 2004 and March 2008, Council violated the

1 daily range for pH a total of three (3) times, constituting three (3) violations. The violations are  
2 as follows:

3		
4	October 2004	1
5	April 2006	1
6	May 2006	1

7 3.26. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an  
8 administrative penalty when EPA finds that "any person ... has violated any permit condition or  
9 limitations ... in a permit issued" pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.  
10 Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Council is  
11 liable for the administrative assessment of civil penalties for violations at the Facility in an  
12 amount not to exceed \$11,000 per day for each day during which the violation continues, up to a  
13 maximum of \$157,500.

14 **IV. CONSENT AGREEMENT**

15 4.1. Council stipulates that EPA has jurisdiction over the subject matter alleged herein.

16 4.2. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA  
17 has taken into account the nature, circumstances, extent, and gravity of the alleged violations as  
18 well as Council's economic benefit of noncompliance, ability to pay, and other relevant factors.  
19 After considering all of these factors, EPA has determined and Council agrees that an  
20 appropriate penalty to settle this action is in the amount of Eleven Thousand Dollars  
21 (\$11,000.00).

22 4.3. Council neither admits nor denies the specific factual allegations contained in Part  
23 III of this CAFO.

1           4.4. Council consents to issuance of the Final Order set forth in Part V, below, and  
2 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days of  
3 the effective date of the Final Order.

4           4.5. Payment under this CAFO shall be made by cashier's check or certified check,  
5 payable to the order of "Treasurer, United States of America" and delivered to the following  
6 address:

7                           U.S. Environmental Protection Agency  
8                           Fines and Penalties  
9                           Cincinnati Finance Center  
                          PO Box 979077  
                          St. Louis, MO 63197-9000

10 Council shall note on the check the title and docket number of this action.

11           4.6. Council shall serve photocopies of the check described in Paragraph 4.5, above,  
12 on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement  
13 at the following addresses:

14                           Regional Hearing Clerk  
15                           U.S. Environmental Protection Agency  
16                           Region 10, MS ORC-158  
17                           1200 Sixth Avenue, Suite 900  
                          Seattle, WA 98101

18                           Office of Compliance and Enforcement  
19                           Attn: David Domingo  
20                           U.S. Environmental Protection Agency  
21                           Region 10, MS OCE-133  
                          1200 Sixth Avenue, Suite 900  
                          Seattle, WA 98101

22           4.7. If Council fails to pay the penalty assessed by this CAFO in full by the due date  
23 set forth in Paragraph 4.4, above, the entire unpaid balance of penalty and accrued interest shall  
24 become immediately due and owing. If Council fails to pay the penalty assessed, Council may  
25

1 be subject to a civil action to collect the assessed penalty under the CWA, together with interest,  
2 fees, costs, and additional penalties described below. In any collection action, the validity,  
3 amount, and appropriateness of the penalty shall not be subject to review.

4 4.8. If Council fails to pay any portion of the penalty assessed by this CAFO in full by  
5 the due date set forth in Paragraph 4.4, above, Council shall be responsible for payment of the  
6 amounts described below:

7 4.8.1. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9),  
8 any unpaid portion of the assessed penalty shall bear interest at a rate established by the  
9 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the  
10 Final Order set forth in Part V, below, provided, however, that no interest shall be  
11 payable on any portion of the assessed penalty that is paid within thirty (30) days of the  
12 effective date of the Final Order.

13 4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
14 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Council fails to pay on a timely  
15 basis the amount of the penalty set forth in Paragraph 4.3, above, Council shall pay (in  
16 addition to any assessed penalty and interest) attorneys fees and costs for collection  
17 proceedings and a quarterly nonpayment penalty for each quarter during which such  
18 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty  
19 percent (20%) of the aggregate amount of Council's penalties and nonpayment penalties  
20 which are unpaid as of the beginning of such quarter.

21 4.9. The penalty described in Paragraph 4.2, above, including any additional costs  
22 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA  
23 and shall not be deductible for purposes of federal taxes.

1 4.10. The undersigned representative of Council certifies that he ~~or she~~ is fully  
2 authorized to enter into the terms and conditions of this CAFO and to bind Council to this  
3 document.

4 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own  
5 costs in bringing or defending this action.

6 4.12. Council expressly waives any rights to contest the allegations and waives any  
7 right to appeal the Final Order set forth in Part V, below.

8 4.13. The provisions of this CAFO shall bind Council and its agents, servants,  
9 employees, successors, and assigns.

10 4.14. The above provisions are STIPULATED AND AGREED upon by Council and  
11 EPA

12 DATED:

CITY OF COUNCIL:

13  
14 12-10-2008

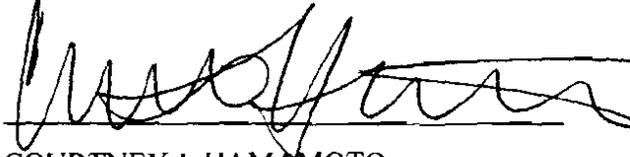


15 Bruce Gardner  
16 Mayor  
17 For Respondent

18  
19 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

20 12/17/08



21 COURTNEY J. HAMAMOTO  
22 Assistant Regional Counsel  
23 For Complainant

V. **FINAL ORDER**

1  
2 5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by  
3 reference into this Final Order. Council is hereby ordered to comply with the foregoing terms of  
4 the settlement.

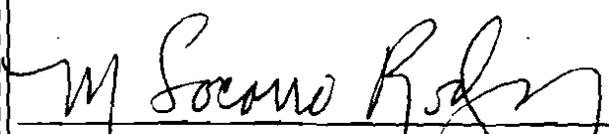
5 5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties  
6 pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R.  
7 § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue  
8 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.  
9 This CAFO does not waive, extinguish, or otherwise affect Council's obligations to comply with  
10 all applicable provisions of the CWA, applicable CWA regulations, and/or any permits issued  
11 thereunder.

12 5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and  
13 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the  
14 opportunity to consult with EPA regarding the assessment of the administrative civil penalty  
15 against Council.

16 5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA  
17 has published public notice of its intent to assess an administrative penalty against Council and  
18 to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have  
19 elapsed since the issuance of this public notice, and EPA has received no petition to set aside the  
20 Consent Agreement contained herein.

21 5.5. This Final Order shall become effective upon filing.  
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23  
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1 SO ORDERED this <sup>5<sup>th</sup></sup> day of February, 2009.

2  
3   
4 M. SOCORRO RODRIGUEZ  
5 Regional Judicial Officer  
6 U.S. Environmental Protection Agency  
7 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 Council, DOCKET NO.: CWA-10-2009-0029** was filed with the Regional Hearing Clerk on February 09, 2009.

On February 09, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

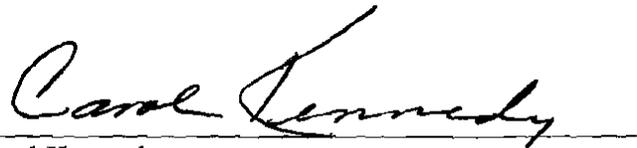
Courtney Hamamoto, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 98101

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 February 09, 2009, to:

Bert Osborn  
Attorney at Law  
P.O. Box 158  
Payette, Idaho 83661

The Honorable Bruce Gardner  
Mayor of Council  
501 Galena Avenue  
Council, Idaho 83612

DATED this 9<sup>th</sup> day of February 2009.



Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10