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EPA - REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF COUNCIL

Council, Idaho

Respondent.

DOCKET NO. CWA-10-2018-0294

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation implementing any of such sections in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415. See also 83 Fed. Reg. 1190 (January 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and City of Council (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement 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**

#### **Statutory and Regulatory Framework**

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into navigable waters except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” CWA § 502(12), 33 U.S.C. § 1362(12).

3.4. The CWA defines a “pollutant” to include “industrial, municipal, and agricultural waste discharged into water.” CWA § 502(6), 33 U.S.C. § 1362(6).

3.5. The CWA defines “point source” to include, *inter alia*, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.6. The CWA § 502(7) defines ‘navigable waters’ as ‘the waters of the United States, including the territorial seas.’ 33 U.S.C. § 1362(7). In turn, ‘waters of the United States’ has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 40 C.F.R. §§ 122.2 & 110.1 (1993).”

3.7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into

navigable waters upon such specific terms and conditions as the Administrator may prescribe.

3.8. On May 1, 2004, EPA issued NPDES Permit No. ID-0020087 (“2004 Permit”), authorizing Respondent to discharge municipal wastewater containing pollutants from the Facility. The 2004 Permit expired on April 30, 2009, but was administratively extended pursuant to 40 C.F.R. § 122.6. Therefore, NPDES Permit No. ID-0020087 is the controlling NPDES permit for the Facility.

### **General Allegations**

3.9. Respondent is a “municipality,” organized under the laws of the State of Idaho, with jurisdiction over the disposal of sewage, industrial wastes, or other wastes, and is a “person” within the meaning of the CWA. CWA Section 502(4)-(5), 33 U.S.C. § 1362(4)-(5).

3.10. Respondent owns and/or operates the City of Council Wastewater Treatment Plant (“Facility”) located in Council, Idaho, at 500 South Hornet Creek Street, Council, Idaho.

3.11. At all times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-0020087 (effective date May 1, 2004) (“2004 Permit”).

3.12. The Facility discharges pollutants from Outfall 001, which discharges into the Weiser River. Outfall 001 is a “point source.” 40 C.F.R. § 122.2.

3.13. The Weiser River flows into the Snake River, which flows into the Columbia River, which flows into the Pacific Ocean. The Weiser River is a tributary to an interstate water body that is subject to interstate commerce. As such, the Weiser River is a “navigable water.” CWA § 502(7), 33 U.S.C. § 1362(7).

3.14. Defendant has discharged pollutants from a point source into navigable waters at

the Facility, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2 (2014).

### **Violations**

3.15. As described below, by discharging domestic wastewater containing pollutants from the Facility into navigable waters, 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). Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its 2004 Permit.

3.16. Part I.A.1 and Table 1 of the 2004 Permit establish effluent limits for the discharges from the City of Council Wastewater Treatment Plant. These effluent limits include, but are not limited to, biochemical oxygen demand (“BOD<sub>5</sub>”), total suspended solids (“TSS”), *Escherichia coli* (“*E. coli*”), and total residual chlorine.

3.17. Part II.B of the 2004 Permit requires Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (“DMR”).

3.18. Each failure to comply with the effluent limitations and monitoring requirements specified in the 2004 Permit, issued pursuant to Section 402 of the CWA, is a violation of the terms and conditions of the 2004 Permit, and is a violation of Section 301(a) of the CWA. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.19. Respondent’s DMRs from February 2014 through March 2017 reflect that the Facility had a total of 682 violations: 681 violations of the effluent limits set forth in the 2004 Permit and one violation for failure to sample.

### Counts 1 – 681: Effluent Limit Violations

3.20. The statements in Paragraphs 1.1 – 3.19 are hereby incorporated by reference as if set forth in full.

3.21. Respondent's DMRs from February 2014 through March 2017 reflect that the Facility had 681 effluent limit violations.

3.22. The specific pollutants for which the effluent limit violations were assessed are BOD<sub>5</sub>, TSS, *E. coli*, and total residual chlorine.

3.23. Part I.A.1 of the Permit prohibits the Facility from discharges in which the average monthly loading in the effluent of BOD exceeds 100 lb/day. Respondent violated this permit condition two times between July 2014 through July 2016, constituting 62 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Actual Value	Units	% Actual value over Permit
Jul-14	BOD	100	475	lb/d	375.0
Jul-16	BOD	100	108	lb/d	8.0

3.24. Part I.A.1 of the Permit prohibits the Facility from discharges in which the average monthly concentration of BOD in the effluent exceed 30 mg/l. Respondent violated this permit condition four times between July 2014 through July 2016, constituting 124 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Actual Value	Units	% Actual value over Permit
Jul-14	BOD	30	590	mg/L	1866.7
May-15	BOD	30	34	mg/L	13.3
Jul-15	BOD	30	35	mg/L	16.7
Jul-16	BOD	30	35	mg/L	16.7

3.25. Part I.A.1 of the Permit prohibits the Facility from discharges in which the maximum daily loading of total residual chlorine in the effluent exceed 0.7 lb/day. Respondent violated this permit condition one time during May 2016, constituting one violation, as follows:

Month of Violation	Pollutant	Permit Limit	Actual Value	Units	% Actual value over Permit
May-16	Chlorine	0.7	.8	lb/d	14.3

3.26. Part I.A.1 of the Permit prohibits the Facility from discharges in which the instantaneous maximum for E.coli count in the effluent exceeds 406/100ml. Respondent violated this permit condition four times between February 2014 and February 2017, constituting four violations, as follows:

Month of Violation	Pollutant	Permit Limit	Actual Value	Units	% Actual value over Permit
Feb-14	E. coli	406	1700	#/100mL	318.7
Jan-16	E. coli	406	2400	#/100mL	491.1
Jan-17	E. coli	406	2400	#/100mL	491.1
Feb-17	E. coli	406	2400	#/100mL	491.1

3.27. Part I.A.1 of the Permit prohibits the Facility from discharges in which the average monthly loading of TSS in the effluent exceeds 100 lb/day. Respondent violated this permit condition six times between December 2015 and March 2017, constituting 185 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Actual Value	Units	% Actual value over Permit
Dec-15	TSS	100	106	lb/d	6.0
Mar-16	TSS	100	252	lb/d	152.0
Apr-16	TSS	100	203	lb/d	103.0
May-16	TSS	100	115	lb/d	15.0
Jul-16	TSS	100	223	lb/d	123.0

Mar-17	TSS	100	131	lb/d	31.0
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3.28. Part I.A.1 of the Permit prohibits the Facility from discharges in which the average monthly concentration of TSS in the effluent exceeds 30 mg/l. Respondent violated this permit condition nine times between November 2014 and July 2016, constituting 274 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Actual Value	Units	% Actual value over Permit
Nov-14	TSS	30	31	mg/L	3.3
Jun-15	TSS	30	44	mg/L	46.7
Jul-15	TSS	30	51	mg/L	70.0
Nov-15	TSS	30	54	mg/L	80.0
Mar-16	TSS	30	36	mg/L	20.0
Apr-16	TSS	30	53	mg/L	76.7
May-16	TSS	30	69	mg/L	130.0
Jun-16	TSS	30	57	mg/L	90.0
Jul-16	TSS	30	72	mg/L	140.0

3.29. Part I.A.4 of the Permit prohibits the Facility from discharges in which the monthly average concentration of TSS in the effluent exceeds 15% of the monthly average influent concentration. Respondent violated this permit condition one time during July 2016, constituting 31 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Actual Value	Units	% Actual value over Permit
Jul-16	TSS % Removal	85	84	%	6.7

Count 682: Failure to Sample

3.30. The statements in Paragraphs 1.1 – 3.29 are hereby incorporated by reference as if set forth in full.

3.31. Part II.C of the Permit specifies that monitoring must be conducted according to



test procedures approved under 40 CFR Part 136, which requires a preservation temperature of less than six degrees Celsius. Respondent violated this permit condition during July 2016 when one monitoring sample from July 6, 2016 had a preservation temperature of 16.7 degrees Celsius, constituting one violation.

#### IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$15,000.00.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check

or certified check must be payable to the order of "Treasurer, United States of America" and delivered 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 serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
young.teresa@epa.gov

Chae Park, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
park.chae@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 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 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 Consent Agreement and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this Consent Agreement and Final Order, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B), and



(4)(C), its right to appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B), its right to seek federal judicial review of the Consent Agreement and Final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and its right to appeal this Consent Agreement and Final Order. Respondent also consents to the issuance of this Consent Agreement and Final Order without further adjudication.

4.12. The provisions of this Consent Agreement and the Final Order 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:

5-22-18

FOR RESPONDENT:

Bruce O. Gardner, OVM  
The Honorable BRUCE GARDNER, Mayor  
City of Council

DATED:

8/3/2018

FOR COMPLAINANT:

Edward J. Kowalski  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF COUNCIL

Council, Idaho

Respondent.

DOCKET NO. CWA-10-2018-0294

**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

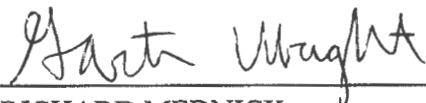
1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

4. This Final Order shall become effective upon filing.

SO ORDERED this 15 day of August, 2018.

  
for RICHARD MEDNICK  
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 Council, Docket No.: CWA-10-2018-0294** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

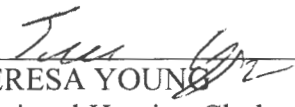
The undersigned certifies that a true and correct copy of the document was delivered to:

Clarke Thurmon  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
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 Bruce Gardner  
Mayor of the City of Council  
City of Council  
501 N Galena Rd  
P.O. Box 606  
Council, ID 83612-0606

DATED this 16 day of August, 2018.

  
\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10

