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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

8)
9 In the Matter of:) DOCKET NO. CWA-10-2007-0006
10)
11 CITY OF SKAGWAY,)
Skagway, Alaska) **CONSENT AGREEMENT AND**
12 Respondent.) **FINAL ORDER**

I. STATUTORY AUTHORITY

15 1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority
16 vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section
17 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B).

18 1.2. The Administrator has delegated the authority to enter into the Final Order
19 contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn
20 has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

21 1.3. Pursuant to Section 309(g)(1) and (g)(2)(B), 33 U.S.C. § 1319(g)(1) and
22 (g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the
23 Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and the

1 City of Skagway ("Skagway") hereby agrees to issuance of, the Final Order contained in Part V
2 of 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 violations of the CWA, together with specific provisions of the CWA and implementing
9 regulations that Skagway is alleged to have violated.

10 III. ALLEGATIONS

11 3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the "discharge of any
12 pollutant by any person" except as authorized by a National Pollutant Discharge Elimination
13 System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section
14 502(12) of the Act, 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. Skagway is a municipality organized under the laws of the State of Alaska and,
18 thus, is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

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

21 3.4. During the times relevant to this action, Skagway was authorized to discharge
22 municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No.
23 AK-002001-0 ("Permit"). The Permit became effective on October 1, 2002 and expires on
24 September 7, 2007.

1 3.5. The Facility, which was under Skagway's control at all times relevant to this
2 action, discharges pollutants from Outfall 001, which is located at latitude 59° 26' 54.8" North
3 and longitude 135° 19' 36.6" West. Outfall 001 is a "point source" within the meaning of
4 Section 502(14) of the Act, 33 U.S.C. § 1562(14).

5 3.6. The Facility discharges municipal wastewater containing pollutants into Taiya
6 Inlet. Taiya Inlet is a "navigable water" within the meaning of Section 502(7) of the Act, 33
7 U.S.C. § 1562(7), and a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

8 3.7. Part I.A. of the Permit established effluent limitations for the discharge from
9 Outfall 001. These effluent limitations include, but are not limited to, limits for biochemical
10 oxygen demand ("BOD"), fecal coliform bacteria, and copper.

11 3.8. Part II.C. of the Permit requires Skagway to summarize monitoring results for the
12 Facility each month in a Discharge Monitoring Report ("DMR").

13 3.9. Skagway's DMRs from October 2002 to November 2005 indicate that the Facility
14 had 1,211 violations of the effluent limitations set forth in the Permit. When a permittee exceeds
15 a monthly average effluent limit, the permittee is deemed to be in violation of that effluent limit
16 each of the days of the month in which the violation occurred. When a permittee exceeds a daily
17 maximum effluent limit, the exceedance is counted as one violation.

18 3.10. Section I.A. of the Permit contains a monthly average effluent limit for BOD in
19 discharges from the Facility that occur between May 1st and September 30th of 140 mg/L.
20 Between October 2002 and November 2005, Skagway violated the monthly average effluent
21 limit for BOD a total of four (4) months, constituting 122 violations. The violations are as
22 follows:

Month of Violation	Number of Violations
June 2003	30
July 2004	31

Month of Violation	Number of Violations
June 2005	30
July 2005	31

3.11. Section I.A. of the Permit contains a monthly average effluent limit for BOD in discharges from the Facility that occur between October 31st and April 30th of 80 mg/L. Between October 2002 and November 2005, Skagway violated the monthly average effluent limit for BOD a total of five (5) months, constituting 152 violations. The violations are as follows:

Month of Violation	Number of Violations
October 2003	31
November 2003	30
April 2004	30
December 2004	31
April 2005	30

3.12. Section I.A. of the Permit contains a daily maximum effluent limit for BOD in discharges from the Facility that occur between May 1st and September 30th of 200 mg/L. Between October 2002 and November 2005, Skagway violated the daily maximum effluent limit for BOD in June 2005, constituting one (1) violation.

3.13. Section I.A. of the Permit contains a daily maximum effluent limit for BOD discharges from the Facility that occur between October 1st and April 30th of 100 mg/L. Between October 2002 and November 2005, Skagway violated the daily maximum effluent limit for BOD a total of six (6) months, constituting six (6) violations. The violations are as follows:

Month of Violation	Number of Violations
December 2002	1
October 2003	1
November 2003	1

Month of Violation	Number of Violations
October 2004	1
December 2004	1
April 2005	1

3.14. Section I.A. of the Permit contains a monthly average removal requirement for BOD in discharges from the Facility that requires that the discharges do not exceed seventy percent (70%) of the monthly average influent concentration. Between October 2002 and November 2005, Skagway violated the monthly average removal requirement for BOD a total of fifteen (15) months, constituting 458 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2003	31
April 2003	30
May 2003	31
June 2003	30
July 2003	31
August 2003	31
November 2003	30
December 2003	31
February 2004	29
March 2004	31
August 2004	31
October 2004	31
December 2004	31
April 2005	30
September 2005	30

3.15. Section I.A. of the Permit contains a monthly average effluent limit for fecal coliform bacteria in discharges from the Facility of 1.0×10^6 colonies/100 mL. Between October 2002 and November 2005, Skagway violated the monthly average effluent limit for fecal

1 coliform bacteria a total of twelve (12) months, constituting 368 violations. The violations are as
2 follows:

Month of Violation	Number of Violations
January 2003	31
June 2003	30
July 2003	31
August 2003	31
September 2003	30
May 2004	31
June 2004	30
July 2004	31
August 2004	31
March 2005	31
June 2005	30
July 2005	31

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13 3.16. Section I.A. of the Permit contains a daily maximum effluent limit for fecal
14 coliform bacteria in discharges from the Facility of 1.5×10^6 colonies/100 mL. Between October
15 2002 and November 2005, Skagway violated the daily maximum effluent limit for fecal coliform
16 bacteria a total of twelve (12) months, constituting twelve (12) violations. The violations are as
17 follows:

Month of Violation	Number of Violations
October 2002	1
January 2003	1
June 2003	1
July 2003	1
September 2003	1
May 2004	1
June 2004	1
July 2004	1
August 2004	1

Month of Violation	Number of Violations
June 2005	1
July 2005	1
August 2005	1

3.17. Section I.A. of the Permit contains a monthly average effluent limit for copper in discharges from the Facility of 150 µg/L. Between October 2002 and November 2005, Skagway violated the monthly average effluent limit for copper a total of three (3) months, constituting 91 violations. The violations are as follows:

Month of Violation	Number of Violations
August 2003	31
September 2005	30
November 2005	30

3.18. Section I.A. of the Permit contains a daily maximum effluent limit for copper in discharges from the Facility of 210 µg/L. Between October 2002 and November 2005, Skagway violated the daily maximum effluent limit for copper in August 2003, constituting one (1) violation.

3.19. Under Section 309(g)(1) of the Act, 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 limitations ... in a permit issued” pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The Permit violations alleged for the Facility constitute violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Consequently, under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Skagway 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 day during which the violation continues, up to a maximum amount of \$157,500.

1 **IV. CONSENT AGREEMENT**

2 4.1. Skagway stipulates that EPA has jurisdiction over the subject matter alleged
3 herein.

4 4.2. As required under Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), EPA has
5 taken into account the nature, circumstances, extent, and gravity of the alleged violations as well
6 as Skagway's economic benefit of noncompliance, ability to pay, and other relevant factors.
7 After considering all of these factors, EPA has determined and Skagway agrees that an
8 appropriate penalty to settle this action is in the amount of Eighteen Thousand Dollars
9 (\$18,000.00).

10 4.3. Skagway neither admits nor denies the specific factual allegations contained in
11 Part III of this CAFO.

12 4.4. Skagway consents to issuance of the Final Order set forth in Part V, below, and
13 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days of
14 the effective date of the Final Order.

15 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
16 payable to the order of "Treasurer, United States of America" and delivered to the following
17 address:

18 Mellon Bank
19 EPA Region 10
20 P.O. Box 36903M
Pittsburgh, Pennsylvania 15251

21 Skagway shall note on the check the title and docket number of this action.

22 4.6. Skagway shall serve photocopies of the check described in Paragraph 4.5, above,
23 on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement
24 at the following addresses:

1 Regional Hearing Clerk
2 U.S. Environmental Protection Agency
3 Region 10
4 1200 Sixth Avenue, ORC-158
5 Seattle, WA 98101

6 Office of Compliance and Enforcement
7 Attn: Jamie Sikorski
8 U.S. Environmental Protection Agency
9 Region 10
10 1200 Sixth Avenue, OCE-133
11 Seattle, WA 98199

12 4.7. If Skagway fails to pay the penalty assessed by this CAFO in fully by the due date
13 set forth in Paragraph 4.4, above, Skagway may be subject to a civil action to collect the assessed
14 penalty under the Act, together with interest, fees, costs, and additional penalties described
15 below. In any collection action, the validity, amount, and appropriateness of the penalty shall
16 not be subject to review.

17 4.8. If Skagway fails to pay any portion of the penalty assessed by this CAFO in full
18 by the due date set forth in Paragraph 4.4, above, Skagway shall be responsible for payment of
19 the amounts described below:

20 4.8.1. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9),
21 any unpaid portion of the assessed penalty shall bear interest at a rate established by the
22 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
23 Final Order set forth in Part V, below, provided, however, that no interest shall be
24 payable on any portion of the assessed penalty that is paid within thirty (30) days of the
25 effective date of the Final Order.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Skagway fails to pay on a timely
basis the amount of the penalty set forth in Paragraph 4.2, above, Skagway shall pay (in

1 addition to any assessed penalty and interest) attorneys fees and costs for collection
2 proceedings and a quarterly nonpayment penalty for each quarter during which such
3 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty
4 percent (20%) of the aggregate amount of Skagway's penalties and nonpayment penalties
5 which are unpaid as of the beginning of such quarter.

6 4.9. The penalty described in Paragraph 4.2, above, including any additional costs
7 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA
8 and shall not be deductible for purposes of federal taxes.

9 4.10. The undersigned representative of Skagway certifies that he or she is fully
10 authorized to enter into the terms and conditions of this CAFO and to bind Skagway to this
11 document.

12 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own
13 costs in bringing or defending this action.

14 4.12. Skagway expressly waives any rights to contest the allegations and waives any
15 right to appeal the Final Order set forth in Part V, below.

16 4.13. The provisions of this CAFO shall bind Skagway and its agents, servants,
17 employees, successors, and assigns.

18 4.14. The above provisions are STIPULATED AND AGREED upon by Skagway and
19 EPA.

20 DATED:

CITY OF SKAGWAY:

21
22 9-3-06

21
22 

23 TIM BOURCY
24 Mayor
25 For Respondent

1 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

2
3 9/14/06



4 COURTNEY J. HAMAMOTO
5 Assistant Regional Counsel
6 For Complainant

7 **V. FINAL ORDER**

8 5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by
9 reference into this Final Order. Skagway is hereby ordered to comply with the foregoing terms
10 of the settlement.

11 5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
12 pursuant to the Act for the violations alleged in Part III, above. In accordance with 40 C.F.R.
13 § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue
14 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
15 This CAFO does not waive, extinguish, or otherwise affect Skagway's obligations to comply
16 with all applicable provisions of the Act, applicable Act regulations, and/or any permits issued
17 thereunder.

18 5.3. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40
19 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the
20 opportunity to consult with EPA regarding the assessment of the administrative civil penalty
21 against Skagway.

22 5.4. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has
23 published public notice of its intent to assess an administrative penalty against Skagway and to
24 invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have
25

1 elapsed since the issuance of this public notice, and EPA has received no petition to set aside the
2 Consent Agreement contained herein.

3 5.5. This Final Order shall become effective upon filing.

4
5 SO ORDERED this 2nd day of November, 2006.

6
7 

8 RICHARD G. McALLISTER
9 Regional Judicial Officer
10 U.S. Environmental Protection Agency
11 Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: City of Skagway, DOCKET NO.: CWA-10-2007-0006** was filed with the Regional Hearing Clerk on November 02, 2006.

On November 02, 2006 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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 on November 02, 2006 to:

Tim Bourcy, Mayor
City of Skagway
P.O. Box 415
Skagway, Alaska 99840

Robert Blasco
Robertson, Monagle & Eastaugh
9360 Glacier Highway, Suite 202
Juneau, Alaska 99801

DATED this 2nd day of November 2006.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10