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U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF RICHFIELD

Richfield, Idaho

Respondent.

DOCKET NO. CWA-10-2018-0306

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 entered into 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 any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation 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).

1.1. 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 Richfield (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), execution 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 redelegated 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 February 14, 2005, EPA issued NPDES Permit No. ID 002121-1 (“2005 Permit”), authorizing Respondent to discharge municipal wastewater containing pollutants from the Facility. The 2005 Permit expired on March 31, 2010, but was administratively extended pursuant to 40 C.F.R. § 122.6. Therefore, NPDES Permit No. ID-002121-1 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 a “person” under CWA Section 502(4)-(5), 33 U.S.C. § 1362(4)-(5).

3.10. Respondent owns and/or operates the City of Richfield Wastewater Treatment Facility (“Facility”) located in Richfield, Idaho, at 1568 East Highway 26, Richfield, 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. ID002121-1 (effective date April 1, 2005) (“2005 Permit”).

3.12. The Facility discharges pollutants from Outfall 001, which discharges into the Little Wood River in the Upper Snake River Basin. Outfall 001 is a “point source.” CWA § 502(14), 33 U.S.C. § 1362(14), 40 C.F.R. § 122.2.

3.13. The Little Wood River flows into the Malad River, which flows into the Snake River, which flows into the Columbia River, which flows into the Pacific Ocean. The Little Wood River is a tributary to an interstate water body that is subject to interstate commerce. As such, the Little Wood River 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 2005 Permit.

3.16. Part I.A of the Permit establishes effluent limits for the discharge from Outfall 001. These effluent limits include 5-day biochemical oxygen demand (“BOD₅”), *Escherichia coli* (“*E. coli*”), potential of hydrogen (“pH”), total residual chlorine (“TRC”), and total suspended solids (“TSS”).

3.17. Parts I.B.1 and II.B.1 of the Permit require 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 Permit, issued pursuant to Section 402 of the CWA, is a violation of the terms and conditions of the 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. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation. When a permittee exceeds a weekly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the week in which the

exceedance occurred. 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.

3.20. Respondent's DMRs from July 2013 through February 2018 indicate that the Facility had 444 violations of the CWA: 373 violations of the effluent limits set forth in the Permit, 69 DMR reporting violations, 1 violation for failure to develop a quality assurance plan ("QAP"), and 1 violation for failure to develop an operations and maintenance ("O&M") plan.

Count 1: 373 Effluent Limit Violations

3.21. The statements in Paragraphs 1 – 3.20 are hereby incorporated by reference as if set forth in full.

3.22. Respondent's DMRs from July 2013 through February 2018 indicate that the Facility had 373 effluent limit violations, constituting 373 violations of the CWA.

3.23. The specific pollutants for which the effluent limit violations were assessed are TSS, TRC, *E.coli*, and pH.

3.24. Part I.A.4 of the Permit specifies that for each month, the monthly average effluent concentration of TSS shall not exceed 35% of the monthly average influent concentration, representing a minimum 65% removal requirement. Respondent violated this permit condition one time between July 2013 and February 2018, constituting 31 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2016	TSS	65	.04	%

3.25. Part I.A.1 of the Permit specifies that the average weekly loading of total TSS in

the effluent shall not exceed 33 lbs/day. Respondent violated this permit condition one time between July 2013 and February 2018, constituting 7 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2016	TSS	33	49.5396	lb/d

3.26. Part I.A.1 of the Permit specifies that the average weekly concentration of total TSS in the effluent shall not exceed 65 mg/L. Respondent violated this permit condition three times between July 2013 and February 2018, constituting 21 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2015	TSS	65	67	mg/L
March 2016	TSS	65	94	mg/L
April 2016	TSS	65	100	mg/L

3.27. Part I.A.1 of the Permit specifies that the average monthly concentrations of TSS in the effluent shall not exceed 23 lbs/day. Respondent violated this permit condition four times between July 2013 and February 2018, constituting 122 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2016	TSS	23	36.0288	lb/d
April 2016	TSS	23	35.862	lb/d
November 2016	TSS	23	25.02	lb/d
December 2016	TSS	23	25.80396	lb/d

3.28. Part I.A.1 of the Permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 45 mg/L. Respondent violated this permit condition six times between July 2013 and February 2018, constituting 183 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2015	TSS	45	67	mg/L
January 2016	TSS	45	52	mg/L
March 2016	TSS	45	94	mg/L
April 2016	TSS	45	100	mg/L
April 2017	TSS	45	52	mg/L
November 2017	TSS	45	49	mg/L

3.29. Part I.A.1 of the Permit specifies that the daily maximum loadings of TRC in the effluent shall not exceed 0.05 lbs/day. Respondent violated this permit condition one time between July 2013 and February 2018, constituting one violation, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2014	TRC	0.05	.07	lb/d

3.30. Part I.A.2 of the Permit specifies that the instantaneous maximum pH shall not exceed 9.0 standard units (SU). Respondent violated this permit condition one time between July 2013 and February 2018, constituting one violation, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2016	pH	9	9.41	SU

3.31. Part I.A.2 of the Permit specifies that the instantaneous minimum pH shall not be lower than 6.5 SU. Respondent violated this permit condition one time between July 2013 and February 2018, constituting one violation, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
December 2014	pH	6.5	5.86	SU

3.32. Part I.A.1 of the Permit specifies that the instantaneous maximum *E.coli* in the effluent shall not exceed 406/100mL. Respondent violated this permit condition six times between July 2013 and February 2018, constituting six violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
December 2013	<i>E.coli</i>	406	866	#/100mL
February 2014	<i>E.coli</i>	406	1300	#/100mL
March 2014	<i>E.coli</i>	406	1733	#/100mL
March 2016	<i>E.coli</i>	406	435	#/100mL
April 2016	<i>E.coli</i>	406	461	#/100mL
December 2016	<i>E.coli</i>	406	1010	#/100mL

Count 2: 69 Discharge Monitoring Report Violations

3.33. The statements in Paragraphs 1 – 3.20 are hereby incorporated by reference as if set forth in full.

3.34. Part I.A.4 of the Permit states “Percent removal of BOD₅ and TSS shall be reported on the Discharge Monitoring Reports (DMRs). Respondent violated this permit condition between July 2013 and February 2018, constituting 62 violations as follows: The percent removals of BOD₅ and TSS were not submitted in the March 2015 DMR.

3.35. Part III.B.1 of the Permit states “Effluent Monitoring Results: The permittee must summarize monitoring results each month on the Discharge Monitoring Report (DMR)...” Respondent violated this permit condition seven times between July 2013 and February 2018, constituting seven violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported in Original DMR	Units	Actual Value	Units
April 2014	TSS	65	60	%	68	%

Month of Violation	Pollutant	Permit Limit	Value Reported in Original DMR	Units	Actual Value	Units
January 2015	TRC	0.05	.1	lb/d	0.036	lb/d
November 2015	TRC	0.05	.07	lb/d	0.0251	lb/d
December 2014	TRC	0.05	.0581298	lb/d	0.014	lb/d
January 2016	TRC	0.05	.11	lb/d	0.006	lb/d
February 2016	TRC	0.05	.11	lb/d	0.007	lb/d
March 2016	TRC	0.05	.12	lb/d	0.0096	lb/d

Count 3: 1 Quality Assurance Plan Violation

3.36. The statements in Paragraphs 1 – 3.20 are hereby incorporated by reference as if set forth in full.

3.37. Part I.E of the Permit requires the permittee to develop a QAP for all monitoring required by the Permit. Respondent violated this permit condition one time between July 2013 and February 2018, constituting one violation, as follows: The Facility was unable to provide a copy of a QAP during the inspection conducted by IDEQ on behalf of EPA on August 16, 2016.

Count 4: 1 Operation and Maintenance Plan Violation

3.38. The statements in Paragraphs 1 – 3.20 are hereby incorporated by reference as if set forth in full.

3.39. Part I.D of the Permit requires the permittee to develop and implement an operations and maintenance plan for the Facility, which is to be retained on site and made available on request to EPA and IDEQ. Respondent violated this permit condition one time between July 2013 and February 2018, constituting one violation as follows: The Facility was unable to provide a copy of an O&M Plan during the inspection conducted by IDEQ on behalf of EPA on August 16, 2016.

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 \$13,500.00.

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

Brian Levo, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
levo.brian@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, 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

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

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal this Consent Agreement and the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

06-19-2018

FOR RESPONDENT:

Charles Buttane
The Honorable CHARLES BUTTCANE, Mayor
City of Richfield, Idaho

DATED:

8/2/2018

FOR COMPLAINANT:

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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF RICHFIELD

Richfield, Idaho

Respondent.

DOCKET NO. CWA-10-2018-0306

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 15th day of August, 2018.



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 Richfield, Docket No.: CWA-10-2018-0306** 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 Charles Buttane
Mayor of the City of Richfield
City of Richfield
P.O. Box 97
Richfield, Idaho 83349

DATED this 17 day of August, 2018.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10