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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CWA-10-2008-0005
	)	
	)	
CITY ELECTRIC, INC. and	)	<b>CONSENT AGREEMENT AND</b>
MUNICIPAL LIGHT & POWER,	)	<b>FINAL ORDER</b>
Anchorage, Alaska	)	
	)	
Respondents.	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States 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 VI of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(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 City Electric, Inc. ("City

1 Electric”) and Municipal Light & Power (“ML&P”) (collectively referred to as “Respondents”)  
2 hereby agree to issuance of, the Final Order contained in Part VI 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 VI of  
6 this CAFO becomes effective.

7 2.2. Part III of this CAFO contains a concise statement of the statutory and factual  
8 basis for the alleged violations of the CWA. Part IV of this CAFO contains the specific  
9 provisions of the CWA that Respondents are 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 pollutant 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. CWA  
14 Section 504(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any  
15 addition of any pollutant to navigable waters from any point source.” “Navigable waters” are  
16 defined as “waters of the United States.”

17 3.2. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit  
18 is required for any storm water discharge “associated with industrial activity.” Section 402(p)  
19 also authorizes EPA to issue regulations that designate additional storm water discharge sources  
20 and establish a comprehensive program to regulate these additional sources.

21 3.3. 40 C.F.R. § 122.26(b)(14)(x) defines “[s]torm water associated with industrial  
22 activity” to include discharges associated with “[c]onstruction activity, including clearing,  
23 grading, and excavation” resulting in the disturbance of at least five acres of total land area. 40  
24 C.F.R. § 122.26(b)(15) defines “storm water discharge associated with small construction  
25

1 activity” to include the “discharge of storm water from ... [c]onstruction activities including  
2 clearing, grading, and excavating that result in land disturbance of equal or greater than one acre  
3 and less than five acres.”

4 3.4. In July of 2003, EPA re-issued the NPDES General Permit for Storm Water  
5 Discharges from Construction Activities (“CGP”) pursuant to Section 402 of the CWA, 33  
6 U.S.C. § 1342. The CGP became effective on July 1, 2003 and authorizes certain discharges of  
7 storm water associated with construction activities. The CGP’s coverage extends to all facilities  
8 in the State of Alaska and requires permittees to comply with the conditions and requirements set  
9 forth in the CGP.

10 3.5. To obtain coverage for storm water discharges from a construction site under the  
11 CGP, an operator must first “prepare and submit a complete and accurate Notice of Intent.” CGP  
12 at Part 2. An “operator” is defined as both (1) “[t]he party [who] has operational control over  
13 construction plans and specifications ...,” and (2) “[t]he party [who] has day-to-day operational  
14 control of those activities at a project which are necessary to ensure compliance with a [storm  
15 water pollution prevention plan] for the site or other permit conditions.” CGP at Appendix A.

16 3.6. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the  
17 owner and operator of any point source to provide such information as may be reasonably  
18 required in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a),  
19 EPA has promulgated NPDES permit application requirements. Among these application  
20 requirements are:

- 21 ▪ The requirement set forth in 40 C.F.R. § 122.21(a)(1) that “[a]ny person  
22 who discharges or proposes to discharge pollutants ... must submit a  
complete application to [EPA],”
- 23 ▪ The requirement set forth in 40 C.F.R. § 122.26(c)(1) that “[d]ischarges of  
24 storm water associated with industrial activity and with small construction  
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1 activity are required to apply for an individual permit or seek coverage  
2 under a promulgated storm water general permit," and

- 3 ▪ The requirement set forth in 40 C.F.R. § 122.21(c)(1) that regulated  
4 dischargers of construction storm water submit an NPDES permit  
5 application or a Notice of Intent to apply for coverage under an NPDES  
6 general permit at least ninety (90) days before the date on which  
7 construction is to commence unless an applicable NPDES general permit  
8 specifies a different submittal date.

9 3.7. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess  
10 administrative penalties against any person who has violated Section 301 or 308 of the CWA, 33  
11 U.S.C. § 1311 or 1318. Section 309(g)(1) of the CWA also authorizes EPA to assess  
12 administrative penalties against any person who has violated any permit condition or limitation  
13 in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

14 3.8. ML&P is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C.  
15 § 1362(5).

16 3.9. City Electric is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C.  
17 § 1362(5).

18 3.10. ML&P is the owner of the Eklutna Transmission Line Project construction site  
19 ("Site") which is located near Eklutna, Alaska. As the owner of the Site, ML&P has operational  
20 control over the construction plans and specifications at the Site. As such, ML&P is an operator  
21 under the CGP.

22 3.11. City Electric operates the Site and, in this capacity, has day-to-day operational  
23 control over those activities at the Site necessary to ensure compliance with the CGP. As such,  
24 City Electric is an operator under the CGP.

25 3.12. The receiving waters for any storm water discharges from the Site are Peters  
Creek, Parks Creek, Mink Creek Tributary 1, Mink Creek Tributary 2, Mink Creek Tributary 3,

1 Mink Creek, Fire Creek, Eklutna River, and Eagle River. All of these waterbodies flow into the  
2 Knik Arm which flows into Cook Inlet. Cook Inlet is susceptible to use in interstate or foreign  
3 commerce, and thus is a "navigable water" as defined in Section 502(7) of the CWA, 33 U.S.C.  
4 § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. § 122.2. Therefore, the  
5 Knik Arm, Peters Creek, Parks Creek, Mink Creek Tributary 1, Mink Creek Tributary 2, Mink  
6 Creek Tributary 3, Mink Creek, Fire Creek, Eklutna River, and Eagle River are "navigable  
7 waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are "waters of the  
8 United States" as defined in 40 C.F.R. § 122.2.

9 3.13. In or about March 2006, Respondents began construction activities that resulted in  
10 the clearing, grading, and/or excavation of more than one acre of land at the Site.

#### 11 IV. VIOLATIONS

##### 12 A. Failure to Apply for Permit Coverage Against ML&P

13 4.1. As an operator of the Site, ML&P was required to either submit a Notice of Intent  
14 to obtain coverage under the CGP or apply for an individual permit before beginning  
15 construction activities at the Site.

16 4.2. Prior to the start of construction activities, ML&P failed to apply for an individual  
17 NPDES permit or properly seek coverage under the CGP. At the time of the EPA site  
18 inspection, on May 9, 2006, ML&P had not received coverage under the CGP.

19 4.3. On or about July 15, 2006, ML&P obtained coverage under the CGP.

20 4.4. Between March 2006 and July 2006, ML&P was operating without coverage  
21 under the CGP.

22 4.5. ML&P's failure to timely apply for an NPDES permit placed ML&P in violation  
23 of the requirements imposed pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. Pursuant to  
24 Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, ML&P is liable for  
25

1 civil penalties not to exceed \$11,000 per day for each day during which the violation continues,  
2 up to a maximum amount of \$157,500.

3 **B. CGP Violations Against City Electric**

4 4.6. City Electric obtained coverage under the CGP on March 9, 2006.

5 4.7. The CGP requires an operator of a construction site to prepare a storm water  
6 pollution prevention plan ("SWPPP"). CGP at Part 3.1. The required contents of a SWPPP are  
7 set forth in Part 3 of the CGP. At the time of the EPA site inspection conducted on May 9, 2006,  
8 the SWPPP failed to meet all of the requirements in the CGP, as set forth below:

- 9 a. The site map in the SWPPP did not identify locations where storm water  
10 discharges to surface water, in violation of Part 3.3.C.7 of the CGP.
- 11 b. The site map in the SWPPP failed to identify the location of all major  
12 structural controls, in violation of Part 3.3.C.3 of the CGP.
- 13 c. The SWPPP did not identify the dates of temporary/permanent  
14 construction cessation or initiation of permanent stabilization measures, in  
15 violation of Parts 3.4.C.2 and 3.4.C.3 of the CGP.
- 16 d. The SWPPP did not identify the timing by which stabilization practices  
17 would be implemented, in violation of Part 3.4.B of the CGP.
- 18 e. The SWPPP did not identify the storm water management measures that  
19 would be implemented to address storm water runoff once construction is  
20 completed, in violation of Part 3.4.E of the CGP.
- 21 f. The SWPPP was not modified within seven days of when best  
22 management practices ("BMPs") were modified or added, in violation of  
23 Part 3.11.C of the CGP.
- 24  
25

1 4.8. At the time of the EPA site inspection, stabilization measures had not been  
2 initiated along Peters Creek, Mink Creek Tributary 1, and Mink Creek, within fourteen days after  
3 temporary or permanent construction ceased, in violation of Part 3.13.D of the CGP.

4 4.9. At the time of the EPA site inspection, silt fences at the Site were not properly  
5 installed or maintained near surface waters, in violation of Part 3.13.A of the CGP.

6 4.10. At the time of the EPA site inspection, inspections were not conducted in the  
7 manner set forth in the CGP, in violation of Part 3.10.E of the CGP.

8 4.11. Under CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an  
9 administrative penalty when EPA finds that "any person ... has violated any permit condition or  
10 limitation ... in a permit issued" pursuant to CWA Section 402, 33 U.S.C. § 1342.  
11 Consequently, under CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), City Electric is  
12 liable for the administrative assessment of civil penalties for violations at the Site in an amount  
13 not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum  
14 amount of \$157,500.

15 **V. CONSENT AGREEMENT**

16 5.1. Respondents stipulate that EPA has jurisdiction over the subject matter alleged  
17 herein.

18 5.2. Respondents expressly waive any right to contest the allegations and to appeal the  
19 Final Order set forth in Part VI, below.

20 5.3. Respondents neither admit nor deny the specific factual allegations contained in  
21 Parts III and IV of this CAFO.

22 5.4. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA  
23 has taken into account the nature, circumstances, extent and gravity of the alleged violations, as  
24 well as the Respondents' economic benefit of noncompliance, ability to pay, and such other  
25

1 matters as justice may require. After considering all of these factors, EPA has determined and  
2 Respondents agree that an appropriate penalty to settle this action is in the amount of Forty-Two  
3 Thousand Three Hundred Dollars (\$42,300).

4 5.5. Respondents consent to issuance of the Final Order set forth in Part VI, below,  
5 and agree to pay the total civil penalty set forth in Paragraph 5.4, above, within thirty (30) days  
6 of the effective date of this Final Order.

7 5.6. Payment under this CAFO shall be made by cashier's check or certified check,  
8 payable to the order of "Treasurer, United States of America" and delivered to the following  
9 address:

10 Mellon Bank  
11 EPA Region 10  
12 P.O. Box 36903M  
Pittsburgh, Pennsylvania 15251

13 Respondents shall note on the check the title and docket number of this action.

14 5.7. Respondents shall serve photocopies of the check described in Paragraph 5.6,  
15 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and  
16 Enforcement at the following addresses:

17 Regional Hearing Clerk  
18 U.S. Environmental Protection Agency  
Region 10  
19 1200 Sixth Avenue, Suite 900, ORC-158  
Seattle, WA 98101

20 U.S. Environmental Protection Agency  
21 309 Bradley Boulevard, Suite 115  
22 Richland, Washington 99352  
Attn: Robert Grandinetti

23 5.8. If Respondents fail to pay the penalty assessed by this CAFO in full by the due  
24 date set forth in Paragraph 5.5, above, the entire unpaid balance of penalty and accrued interest  
25



1 shall become immediately due and owing. If Respondents fail to pay the penalty assessed,  
2 Respondents may be subject to a civil action to collect the assessed penalty under the CWA,  
3 together with interest, fees, costs, and additional penalties described below. In any collection  
4 action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

5 5.9. If Respondents fail to pay any portion of the penalty assessed by this CAFO in  
6 full by the due date set forth in Paragraph 5.5, above, Respondents shall be responsible for  
7 payment of the amounts described below:

8 5.9.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.  
9 § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate  
10 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the  
11 effective date of the Final Order set forth in Part VI, below, provided, however, that no  
12 interest shall be payable on any portion of the assessed penalty that is paid within thirty  
13 (30) days of the effective date of the Final Order.

14 5.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
15 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a  
16 timely basis the amount of the penalty set forth in Paragraph 5.4, above, Respondents  
17 shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for  
18 collection proceedings and a quarterly nonpayment penalty for each quarter during which  
19 such failure to pay persists. Such nonpayment penalty shall be in an amount equal to  
20 twenty percent (20%) of the aggregate amount of Respondents' penalties and nonpayment  
21 penalties which are unpaid as of the beginning of such quarter.

22 5.10. The penalty described in Paragraph 5.4, above, including any additional costs  
23 incurred under Paragraph 5.9, above, represents an administrative civil penalty assessed by EPA  
24 and shall not be deductible for purposes of federal taxes.

1 5.11. The undersigned representatives of Respondents certify that they are fully  
2 authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this  
3 document.

4 5.12. Except as described in Subparagraph 5.9.2, above, each party shall bear its own  
5 costs in bringing or defending this action.

6 5.13. The provisions of this CAFO shall bind Respondents and their agents, servants,  
7 employees, successors, and assigns.

8 5.14. The above provisions are STIPULATED AND AGREED upon by Respondents  
9 and EPA.

10  
11  
12 DATED:

CITY ELECTRIC. INC.:

13  
14 9-13-2009

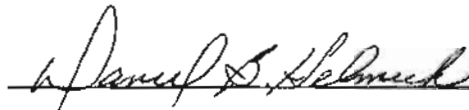


GABRIEL MARIAN  
President  
For Respondent

15  
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18  
19 DATED:

MUNICIPAL LIGHT & POWER:

20  
21 9/21/07



DANIEL B. HELMICK  
Manager of Regulatory Affairs  
For Respondent

1 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

2  
3 10/1/07



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

6 **VI. FINAL ORDER**

7 6.1. The terms of the foregoing Parts I-V are hereby ratified and incorporated by  
8 reference into this Final Order. Respondents are hereby ordered to comply with the foregoing  
9 terms of the settlement.

10 6.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties  
11 pursuant to the CWA for the violations alleged in Parts III and IV, above. In accordance with 40  
12 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to  
13 pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of  
14 law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to  
15 comply with all applicable provisions of the CWA, applicable CWA regulations, and/or any  
16 permits issued thereunder.


17 6.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and  
18 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the  
19 opportunity to consult with EPA regarding the assessment of the administrative civil penalty  
20 against Respondents.

21 6.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA  
22 has published public notice of its intent to assess an administrative penalty against Respondents  
23 and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days  
24  
25

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

3 6.5. This Final Order shall become effective upon filing.

4  
5 SO ORDERED this 16<sup>th</sup> day of November, 2007.

6  
7 

8 RICHARD G. McALLISTER  
9 Regional Judicial Officer  
10 U.S. Environmental Protection Agency  
11 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 Electric, Inc. and Municipal Light & Power**, **DOCKET NO.: CWA-10-2008-0005** was filed with the Regional Hearing Clerk on November 16, 2007.

On November 16, 2007 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, M/S ORC-158  
Suite 900  
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 16, 2007, to:

City Electric, Inc.  
819 Orca Street  
Anchorage, Alaska 99501

Municipal Light & Power  
1200 East First Avenue  
Anchorage, Alaska 99501

DATED this 16<sup>th</sup> day of November 2007.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10

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PS Form 3800, August 2006

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 or PO Box No.

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