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HEARINGS CLERK
EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2017-0051
)	
KETCHIKAN GATEWAY BOROUGH)	CONSENT AGREEMENT AND
MOUNTAIN POINT AND FOREST)	FINAL ORDER
PARK WASTEWATER TREATMENT)	
FACILITIES)	
Ketchikan, Alaska)	
)	
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” or “Act”), 33 U.S.C. § 1319(g)(2)(B). 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 has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.2. Pursuant to Sections 309(g)(1) and 309(g)(2) of the CWA, 33 U.S.C. §§ 1319(g)(1) and (g)(2), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Ketchikan Gateway Borough (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

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

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

2.3. Part III of this CAFO 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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.2. Section 402(a) of the Act, 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 the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

3.3. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a State may seek authorization to administer its own program for discharges into navigable waters within its jurisdiction.

3.4. In 2008, EPA approved the State of Alaska Department of Environmental Conservation's ("ADEC's") application to administer the NPDES permitting program in the State. 74 Fed. Reg. 66,243 (2008). ADEC refers to the EPA-approved state NPDES program as the Alaska Pollutant Discharge Elimination System ("APDES") program.

3.5. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." The term "navigable waters" is defined as "waters of the United States." 33 U.S.C. § 1362(7). CWA Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, solid waste, sewage, sewage sludge, biological materials, and industrial and municipal waste. 40 C.F.R. § 122.2 defines "waters of the United States" to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters.

3.6. Respondent is a borough duly organized and existing pursuant to the laws of the State of Alaska. Respondent is thus a "municipality" as defined in CWA Section 502(4), 33 U.S.C. § 1362(4), and a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.7. Respondent owns and operates the Mountain Point Wastewater Treatment Facility ("Mountain Point Facility") and the Forest Park Wastewater Treatment Facility ("Forest Park Facility"), both of which are located in the Ketchikan Gateway Borough, Alaska (collectively, "the Facilities").

3.8. At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facilities pursuant to NPDES General Permit No. AKG571000 ("2004 Permit") or the subsequent APDES General Permit No. AKG572000 ("2012 Permit") (collectively, "the Permits"). The 2004 Permit had an effective date of July 21, 2004, and expired on July 21, 2009. The 2004 Permit was administratively extended until the

2012 Permit was effective on November 1, 2012. The 2012 Permit expires on October 31, 2017. The Permits contain effluent limitations and other measures to protect water quality.

3.9. The Mountain Point Facility is listed as an authorized facility in Appendix A of the 2004 Permit and in Appendix D, Table A of the 2012 permit. The Mountain Point Facility's specific authorizations under the 2004 and 2012 permits are AKG571007 and AKG572028, respectively.

3.10. On September 29, 2006, EPA issued coverage under the 2004 Permit to Respondent for the Forest Park Facility ("2006 Authorization"). The 2006 Authorization acknowledged that ADEC had authorized modified effluent limitations based upon an approved mixing zone for the following parameters: fecal coliform, total residual chlorine ("TRC"), dissolved oxygen ("DO"), pH, and flow. The 2006 Authorization reiterated the average monthly, average weekly, and daily maximum limits for 5-day biological oxygen demand ("BOD₅") and total suspended solids ("TSS") that were in the 2004 Permit, Part II.A.2.a.i, Table 1 (Category 1). The Forest Park Facility was subsequently listed as an authorized facility in Appendix D, Table A of the 2012 permit. The Forest Park Facility's specific authorizations under the 2004 and 2012 permits are AKG571045 and AKG572019, respectively.

3.11. The Mountain Point Facility discharges pollutants from an outfall labeled "Outfall 001" to the Revillagigedo Channel of the Tongass Narrows. Outfall 001 is a "point source" as defined in 40 C.F.R. § 122.2.

3.12. The Forest Park Facility discharges pollutants to a different outfall, also labeled "Outfall 001," to the Tongass Narrows. This Outfall 001 is also a "point source" as defined in 40 C.F.R. § 122.2.

3.13. The Tongass Narrows is within the territorial seas, is subject to the ebb and flow of the tide, and is susceptible to use in interstate and foreign commerce. As such, the Tongass

Narrows is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.14. By discharging wastewater containing pollutants from the Facilities into waters of the United States, Respondent engaged in the “discharge of pollutants” from point sources within the meaning of CWA Sections 301(a) and 502(13), 33 U.S.C. §§ 1311(a) and 1362(12).

3.15. An authorized EPA representative inspected the Facilities on September 1-2, 2015, to determine compliance with Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Permits.

3.16. At the time of the inspection, the authorized EPA representative observed or learned of the following violations of the Permits at the Mountain Point Facility:

3.16.1. Lack of 24-hour composite influent and effluent sampling for TSS and BOD₅, as required by the 2012 Permit, Part 2.4, Table 2, and Appendix A, Part 3.1;

3.16.2. Lack of a Quality Assurance Project Plan (“QAPP”), as required by the 2004 Permit, Part II.D., and as required by the 2012 Permit, Part 2.7. The Mountain Point Facility has not had a QAPP since at least May of 2011.

3.16.3. Improper operation and maintenance, including inadequate laboratory controls, as required by Appendix A, Part 1.6.1, of the 2012 Permit. At the time of the inspection, the laboratory calibration log indicated that the pH and DO meters had last been calibrated in September of 2014. At the time of the inspection, Respondent was also using expired pH buffer solutions in the laboratory (the 10.01 pH buffer expired in March of 2014 and the 7.00 pH buffer expired in July of 2013).

3.16.4. Lack of 2012 Permit familiarity by Mountain Point Facility staff, in violation of Part 2.7.5.3 and Appendix A, Part 1.6.1 of the 2012 Permit.

3.16.5. Fecal coliform effluent exceedance in February of 2015 due to expired chlorine tablets, in violation of Appendix A, Part 1.6.1 of the 2012 Permit;

3.16.6. Fecal coliform effluent exceedance in December of 2013 due to inadequate chlorine contact time, in violation of Appendix A, Part 1.6.1 of the 2012 Permit;

3.16.7. Fecal coliform effluent exceedance in May of 2013 due to sampling prior to treatment, in violation of Appendix A, Part 3.1 of the 2012 Permit;

3.16.8. Inadequate recordkeeping in violation of Appendix A, Part 1.11.2 of the 2012 Permit. At the time of the inspection, the Mountain Point Facility lacked copies of its November 2012 Discharge Monitoring Report (“DMR”) and associated non-compliance report, the May 2015 Analytica Chain-of-Custody, and the July through December of 2014 R&M Engineering Chains of Custody;

3.16.9. The December 2012, May 2013, and December 2013 non-compliance reports were not signed and dated, in violation of Appendix A, Part 1.12.1 of the 2012 Permit;

3.16.10. At least 10 instances where Respondent relinquished samples to R&M Engineering but did not sign the Chain of Custody, in violation of Appendix A, Part 1.11.2.6 of the 2012 Permit;

3.16.11. Lack of records of sampling and analysis times for flow, pH, DO, and TRC, in violation of Appendix A, Part 1.11.3 of the 2012 Permit.

3.17. At the time of the inspection, the authorized EPA representative observed or learned of the following violations of the Permits at the Forest Park Facility:

3.17.1. Lack of a QAPP, as required by the 2004 Permit, Part II.D., and as required by the 2012 Permit, Part 2.7. The Forest Park Facility has not had a QAPP since at least May of 2011.

3.17.2. Improper operation and maintenance, including inadequate laboratory controls, as required by Appendix A, Part 1.6.1, of the 2012 Permit. At the time of the

inspection, the laboratory calibration log indicated that the pH and DO meters had last been calibrated in September of 2014. At the time of the inspection, Respondent was also using expired pH buffer solutions in the laboratory (the 10.01 pH buffer expired in March of 2014 and the 7.00 pH buffer expired in July of 2013).

3.17.3. Lack of 2012 Permit familiarity by Forest Park Facility staff, in violation of Part 2.7.5.3, and Appendix A, Part 1.6.1 of the 2012 Permit.

3.17.4. Fecal coliform effluent exceedance in July of 2014 due to expired chlorine tablets, in violation of Appendix A, Part 1.6.1 of the 2012 Permit;

3.17.5. Fecal coliform effluent exceedances in March and April of 2014 due to inadequate chlorine contact time, in violation of Appendix A, Part 1.6.1 of the 2012 Permit;

3.17.6. Inadequate recordkeeping in violation of Appendix A, Part 1.11.2 of the 2012 Permit. At the time of the inspection, the Forest Park Facility lacked copies of its chain of custody forms for July, August, October, November, and December of 2014, and for April and July of 2015. At the time of the inspection, the Forest Park Facility also lacked copies of its November 2012 DMR, its November 2012 non-compliance report, and its April 2013 non-compliance report.

3.17.7. The non-compliance reports for December of 2012 and February of 2013 did not describe the causes of the reported effluent limit exceedances, in violation of Appendix A, Part 3.4.2.1 of the 2012 Permit.

3.17.8. At least 14 instances where Respondent relinquished samples to R&M Engineering but did not sign the Chain of Custody, in violation of Appendix A, Part 1.11.2.6 of the 2012 Permit;

3.17.9. Lack of records of sampling and analysis times for flow, pH, DO, and TRC, in violation of Appendix A, Part 1.11.3 of the 2012 Permit.

3.18. The 2004 Permit, Part III.B, and the 2012 Permit, Appendix A, Part 3.2, require Respondent to summarize monitoring results for the Facilities each month in a DMR.

3.19. EPA reviewed the Mountain Point Facility's DMRs, which contained several inaccuracies, in violation of Appendix A, Part 1.12.5 of the 2012 Permit. The Mountain Point Facility inaccurately reported zero entries for effluent temperature in February, July, August, October, and November of 2015; January, March, April, May, June, August, September, November, and December of 2014; and July, August, September, and November of 2013. The Mountain Point Facility inaccurately reported zero entries for total ammonia in January, April, and May of 2015; January, March, April, May, June, August, September, November, and December of 2014; and July, August, September, and November of 2013.

3.20. EPA reviewed the Forest Park Facility's DMRs, which contained several inaccuracies, in violation of Appendix A, Part 1.12.5 of the 2012 Permit. In June and July of 2014, and in March and July of 2015, the Forest Park Facility inaccurately reported zero entries for the daily maximum sample of TRC when there was an average monthly TRC numeric entry.

3.21. The Permits establish effluent limits for the discharges from the point sources at the Facilities. These effluent limits include, but are not limited to, fecal coliform, DO, and pH.

3.22. Respondent's DMRs from May of 2011 through December of 2015 show that the Mountain Point Facility had 512 effluent limit violations of the Permits and that the Forest Park Facility had 1,425 effluent limit violations of the Permits. When a permittee exceeds an average monthly effluent limit, the permittee is deemed to be in violation of the effluent limit each day of the month in which the exceedance occurred. When a permittee exceeds an average weekly 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.

3.23. Respondent exceeded the applicable effluent limits at its Mountain Point Facility, as summarized in Paragraph 3.22, as follows:

3.23.1. Appendix A, Part II.A.2 of the 2004 Permit specifies that the average monthly limit of fecal coliform in the effluent shall not exceed 200 fecal colonies per 100 milliliters (FC/100ml). Between May 2011 and October 2012, Respondent violated the average monthly fecal coliform limit during 4 months, constituting 123 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
November 2011	337	30
December 2011	1,673	31
January 2012	1,566	31
March 2012	272	31

3.23.2. Appendix A, Part II.A.2 of the 2004 Permit specifies that the daily maximum limit of fecal coliform in the effluent shall not exceed 800 FC/100ml. Between May 2011 and October 2012, Respondent violated the daily maximum limit of fecal coliform 5 times, constituting 5 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
November 2011	12,600	1
December 2011	20,000	1
January 2012	11,684	1
March 2012	7,400	1
September 2012	4,000	1

3.23.3. Part II.A.2.a.i, Note 1, of the 2004 Permit specifies the formula for calculating the mass loading limits for BOD₅, which is based on the design flow of the permitted facility. The Mountain Point Facility's design flow is 0.7 million gallons per day. Using the formula in Part II.A.2.a.i, Note 1, the monthly average mass loading limit for BOD₅ is 175 pounds per day (lb/d) and the daily maximum mass loading limit for

BOD₅ is 350 lb/d. Between May 2011 and October 2012, Respondent violated either the monthly average mass loading limit or the daily maximum mass loading limit 8 times, constituting 216 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
June 2011	181 (Monthly)	30
July 2011	304 (Monthly)	31
March 2012	189 (Monthly)	31
June 2012	316 (Monthly)	30
June 2012	381 (Daily)	1
July 2012	314 (Monthly)	31
August 2012	195 (Monthly)	31
October 2012	328 (Monthly)	31

3.23.4. Appendix A, Part II.A.2 of the 2004 Permit specifies that the daily concentration of DO in the effluent shall not be lower than 2 milligrams per liter (mg/L). Between May 2011 and October 2012, Respondent exceeded this minimum limit 1 time, constituting 1 violation. The violation is:

Month of Violation	Value Reported in DMR	Number of Violations
May 2012	1	1

3.23.5. Appendix A, Part II.A.2 of the 2004 Permit specifies that the instantaneous minimum-maximum range limit for pH in the effluent is 6.0 – 9.0 standard units (S.U.). Between May 2011 and October 2012, Respondent exceeded the instantaneous minimum limit 2 times, constituting 2 violations. The violations are:

Month of Violation	Value Reported in DMR	Number of Violations
February 2012	4.37	1
April 2012	5.65	1

3.23.6. Appendix D, Table A of the 2012 Permit specifies that the average monthly limit of fecal coliform in the effluent shall not exceed 200 FC/100ml. Between November 2012 and December 2015, Respondent exceeded this limit during 5 months, constituting 152 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
December 2012	1,832	31
May 2013	294	31
December 2013	617	31
February 2015	20,000	28
October 2015	1,335	31

3.23.7. Appendix D, Table A of the 2012 Permit specifies that the daily maximum limit of fecal coliform in the effluent shall not exceed 800 FC/100ml. Between November 2012 and December 2015, Respondent exceeded this daily limit 5 times, constituting 5 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
December 2012	46,000	1
May 2013	1,440	1
December 2013	1,054	1
February 2015	30,000	1
October 2015	2,400	1

3.23.8. Part 2.4, Table 2 of the 2012 Permit specifies that the average weekly limit of TSS in the effluent shall not exceed 45 mg/L. Between November 2012 and December 2015, Respondent exceeded this weekly limit during 1 week, constituting 7 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
April 2013	180	7

3.23.9. Appendix D, Table A of the 2012 Permit specifies that the daily concentration of DO in the effluent shall not be lower than 2 mg/L. From November 2012 through December 2015, Respondent exceeded this minimum daily limit 1 time, constituting 1 violation. The violation is:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
November 2012	0.75	1

3.24. Respondent exceeded the applicable effluent limits at its Forest Park Facility, as summarized in Paragraph 3.22, as follows:

3.24.1. The 2006 Authorization specifies that the average monthly, average weekly, and daily maximum limits of fecal coliform in the effluent shall not exceed 200 FC/100ml, 400 FC/100mL, and 800 FC/100ml, respectively. From May 2011 through October 2012, Respondent exceeded each of these limits 21 times, constituting 271 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
May 2011	250,000	39
June 2011	7,900	38
July 2011	300,000	39
August 2011	680,000	39
January 2012	1,472	39
April 2012	33,000	38
August 2012	4,000	39

3.24.2. The 2006 Authorization specifies that the average monthly, average weekly, and daily maximum limits for BOD₅ in the effluent shall not exceed 30 mg/L, 45

mg/L and 60 mg/L, respectively. From May 2011 through October 2012, Respondent exceeded these limits 5 times, constituting 99 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
December 2011	32 (Monthly)	31
June 2012	83 (Monthly, Weekly & Daily)	38
September 2012	32 (Monthly)	30

3.24.3. Part II.A.2.a.iv of the 2004 Permit specifies that for any month, the monthly average effluent concentration must not exceed 15 percent of the monthly average influent concentration for BOD₅ (i.e., the facility must achieve at least 85 percent removal). From May 2011 through October 2012, Respondent did not meet the minimum 85 percent removal requirement for BOD₅ during 2 months, constituting 61 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
September 2012	50%	30
October 2012	80%	31

3.24.4. Part II.A.2.a.i, Table 1 of the 2004 Permit specifies that the average monthly, average weekly, and daily maximum limits for TSS in the effluent shall not exceed 30 mg/L, 45 mg/L and 60 mg/L, respectively. From May 2011 through October 2012, Respondent exceeded these limits 4 times, constituting 75 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
April 2012	52 (Monthly & Weekly)	37
July 2012	50 (Monthly & Weekly)	38

3.24.5. Part II.A.2.a.iv of the 2004 Permit specifies that for any month, the monthly average effluent concentration must not exceed 15 percent of the monthly average influent concentration for TSS (i.e., the facility must achieve at least 85 percent removal). From May 2011 through October 2012, Respondent did not meet the minimum 85 percent removal requirement for TSS during 2 months, constituting 60 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
February 2012	80%	29
July 2012	17%	31

3.24.6. The 2006 Authorization specifies that the daily DO concentration in the effluent shall not be lower than 2 mg/L. From May 2011 through October 2012, Respondent exceeded this minimum limit 1 time, constituting 1 violation. The violation is:

Month of Violation	Value Reported in DMR	Number of Violations
June 2011	0	1

3.24.7. The 2006 Authorization specifies the daily maximum effluent flow limit of 0.06 million gallons per day (“mgd”). From May 2011 through October 2012, Respondent exceeded this limit 1 time, constituting 1 violation. The violation is:

Month of Violation	Value Reported in DMR	Number of Violations
May 2012	163,620	1

3.24.8. Appendix D, Table A of the 2012 Permit specifies that the average monthly limit of fecal coliform in the effluent shall not exceed 200 FC/100ml. From November 2012 through December 2015, Respondent exceeded this limit during 8 months, constituting 246 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
December 2012	7,195	31
February 2013	17,822	31
April 2013	80,000	31
March 2014	1,100	31
April 2014	1,100	30
July 2014	2,100	31
January 2015	30,000	31
September 2015	245	30

3.24.9. Appendix D, Table A of the 2012 Permit specifies that the daily maximum limit of fecal coliform in the effluent shall not exceed 800 FC/100ml. From November 2012 through December 2015, Respondent exceeded this daily limit 7 times, constituting 7 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
December 2012	13,273	1
February 2013	17,822	1
April 2013	80,000	1
March 2014	1,100	1
April 2014	1,100	1
July 2014	2,100	1
January 2015	30,000	1

3.24.10. Part 2.4, Table 3 of the 2012 Permit specifies that the average monthly, average weekly, and daily maximum limits for BOD₅ in the effluent shall not exceed 30 mg/L, 45 mg/L, and 60 mg/L, respectively. From November 2012 through December 2015, Respondent exceeded these limits 8 times, constituting 142 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
February 2013	40 (Monthly)	28
April 2013	104 (Monthly, Weekly & Daily)	38
May 2013	87 (Weekly)	7
January 2014	36 (Monthly)	31
January 2015	57 (Monthly & Weekly)	38

3.24.11. Part 2.4, Table 3 of the 2012 Permit specifies that for any month, the average monthly removal for BOD₅ must be at least 85 percent. From November 2012 through December 2015, Respondent did not meet the minimum 85 percent removal requirement for BOD₅ during 1 month, constituting 30 violations. The violation is:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
April 2013	79%	30

3.24.12. Part 2.4, Table 3 of the 2012 Permit specifies that the average monthly, average weekly, and daily maximum limits for TSS in the effluent shall not exceed 30 mg/L, 45 mg/L, and 60 mg/L, respectively. From November 2012 through December 2015, Respondent exceeded these limits 11 times, constituting 182 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
December 2012	33 (Monthly & Weekly)	38
February 2013	140 (Monthly, Weekly & Daily)	36
March 2013	80 (Monthly, Weekly & Daily)	39
May 2013	50 (Monthly & Weekly)	38
January 2015	32 (Monthly)	31

3.24.13. Part 2.4, Table 3 of the 2012 Permit specifies that for any month, the average monthly removal for TSS must be at least 85 percent. From November 2012 through December 2015, Respondent did not meet the minimum 85 percent removal requirement for TSS during 7 months, constituting 213 violations. The violations are:

Month of Violation	Value Reported in DMR (rounded)	Number of Violations
December 2012	75%	31
February 2013	36%	28
March 2013	43%	31
May 2013	38%	31
June 2013	78%	30
October 2014	73%	31
December 2014	67%	31

3.24.14. Appendix D, Table A of the 2012 Permit specifies that the daily concentration of DO in the effluent shall not be lower than 2 mg/L. From November 2012 through December 2015, Respondent exceeded this minimum daily limit 2 times, constituting 2 violations. The violations are:

Month of Violation	Value Reported in DMR	Number of Violations
November 2012	0.8	1
December 2012	1.3	1

3.24.15. Appendix D, Table A of the 2012 Permit specifies that the average monthly and daily maximum concentration of TRC in the effluent shall not exceed 0.5 mg/L and 1 mg/L, respectively. From November 2012 through December 2015, Respondent exceeded these limits 2 times, constituting 31 violations. The violations are:

Month of Violation	Value Reported in DMR	Number of Violations
October 2013	10 (Monthly & Daily)	31

3.24.16. Appendix D, Table A of the 2012 Permit specifies a daily maximum effluent flow limit of 0.06 mgd. From November 2012 through December 2015, Respondent exceeded this daily limit 4 times, constituting 4 violations. The violations are as follows:

Month of Violation	Value Reported in DMR	Number of Violations
November 2014	166,700	1
December 2014	82,000	1
March 2015	81,100	1
November 2015	172,000	1

3.25. During the violations period set forth above, Respondent made good-faith efforts to comply with the Permits.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

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

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well

as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$9,250.00.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

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 described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Teresa Young
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Rick Cool
Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO 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.

4.7.1. Interest. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), 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.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), 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 CAFO 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 CAFO, Respondent has corrected the violation(s) alleged in Part III above, including that Respondent has developed a QAPP, dated December 15, 2016, for

each of the Facilities. Respondent has agreed to enter into a Compliance Order on Consent, which will be issued by EPA under the authority of Sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318, 1319(a), for implementation of the QAPPs, as required by Part 2.7.1 of the 2012 Permit.

4.11. Except as described in Subparagraph 4.7.2, 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 the Final Order set forth in Part V.

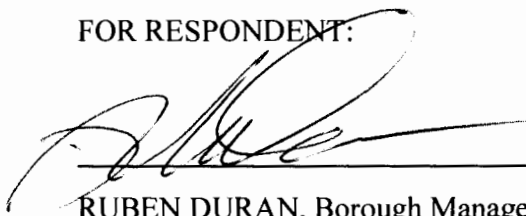
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

2/2/17

FOR RESPONDENT:

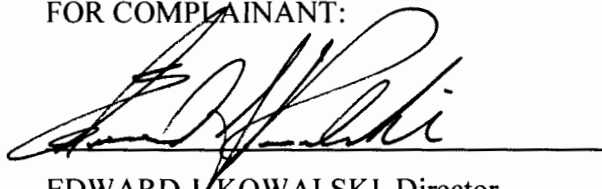


RUBEN DURAN, Borough Manager
Ketchikan Gateway Borough

DATED:

3/22/2017

FOR COMPLAINANT:



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

V. FINAL ORDER

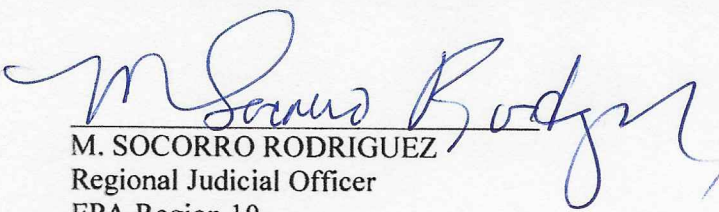
5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO 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.

5.3. Pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 27th day of March, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Ketchikan Gateway Borough, CWA-10-2017-0051** was filed with the Regional Hearing Clerk and served on the following addressees in the manner and on the date specified below:

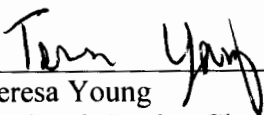
The undersigned certifies that a true and correct copy of the above-described document was delivered to:

Ashley Palomaki
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the above-described document was placed in the United States mail certified/return receipt to:

Ruben Duran, Borough Manager
Ketchikan Gateway Borough
1900 First Avenue, Suite 210
Ketchikan, AK 99901

DATED this 29 day of March 2017.



Teresa Young
Regional Hearing Clerk
EPA Region 10



Public Notice: Proposed Penalty Against Ketchikan Gateway Borough for Clean Water Act Violations

How to Comment

Comments accepted through: 03/13/2017

How to Comment

Persons wishing to comment on the EPA's proposed action or to become participants in this action may do so by submitting their address and telephone number, along with written comments, to the Regional Hearing Clerk at the address below within 30 days of the date of this notice.

Written comments should reference **Docket Number CWA-10-2017-0051** and be sent to:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-113)
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140
206-553-1632

Questions? For additional information, contact [Rick Cool](mailto:cool.richard@epa.gov) (cool.richard@epa.gov), 206-553-6223.

Publish Date: 02/09/2017

Summary

EPA proposes to commence an administrative penalty action and enter into an agreement with Ketchikan Gateway Borough for violations of the Clean Water Act at its Mountain Point and Forest Park wastewater treatment facilities in Ketchikan, Alaska.

EPA alleges that the respondent's wastewater treatment facilities discharged pollutants to waters of the United States in violation of Section 301(a) of the Clean Water Act.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

FEB - 2 2017

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Michelle Bonnet Hale
Director, Division of Water
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501

Re: Ketchikan Gateway Borough Mountain Point and Forest Park
Wastewater Treatment Facilities
Docket No. CWA-10-2017-0051

Dear Ms. Hale: *Michelle*

This letter is to advise you of a penalty action which Region 10 of the U.S. Environmental Protection Agency (EPA) plans to initiate in the state of Alaska. The proposed action is in response to alleged violations of the Clean Water Act (CWA) by the Ketchikan Gateway Borough at their Mountain Point and Forest Park wastewater treatment facilities. The penalty action is based on EPA's inspections of the facilities in September 2015 and administrative file reviews.

EPA is providing notice of this action to the State of Alaska pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1). Please consider this an opportunity to provide EPA Region 10 with any comments the Department of Environmental Conservation may have regarding this action.

You may find a copy of the public notice of this proposed action when available at:
<http://yosemite.epa.gov/R10/homepage.nsf/Information/R10PN>

Any comments or questions you may have regarding this action may be directed to Rick Cool of my staff at 206-553-6223. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Kowalski".

Edward J. Kowalski
Director

cc: Mr. Mike Solter
Alaska Department of Environmental Conservation