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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2010-0015
)	
RAINBOW TROUT FARMS, INC.,)	CONSENT AGREEMENT AND
Filer, Idaho)	FINAL ORDER
)	
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"), 33 U.S.C. § 1319(g)(2)(B).

1.2. 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 in turn has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B), 33 U.S.C. § 1319(g)(1) and (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

1 Rainbow Trout Farms, Inc. ("Respondent") hereby agrees to issuance of, the Final Order
2 contained in Part V 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 that Respondent is
9 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. Section
14 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to
15 include "any addition of any pollutant to navigable waters from any point source." "Navigable
16 waters" are defined as "waters of the United States." 33 U.S.C. § 1362(7).

17 3.2. Respondent is a corporation and thus is a "person" as defined in Section 502(5) of
18 the CWA, 33 U.S.C. § 1362(5).

19 3.3. Respondent owns and operates a fish hatchery and processing plant ("Facility")
20 located at the intersection of 3950 North and Highway 30 in Filer, Idaho. Respondent raises and
21 processes fish, primarily rainbow trout, at the Facility.

22 3.4. Prior to December 1, 2007, Respondent was authorized to discharge effluent from
23 the Facility pursuant to the General NPDES Permit for Aquaculture Facilities in Idaho ("Expired
24 Permit"). The Facility was given NPDES Tracking No. IDG130028.

1 3.5. Since December 1, 2007, Respondent has been authorized to discharge effluent
2 from the Facility pursuant to the General Permit for Fish Processors Associated with
3 Aquaculture Facilities in Idaho (“Current Permit”). The Facility was given NPDES Tracking
4 No. IDG132003.

5 3.6. The Facility, which was under Respondent’s control at all times relevant to this
6 action, discharges effluent containing pollutants from Outfall 001 into Cedar Draw. Outfall 001
7 is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

8 3.7. Cedar Draw flows into the Snake River. The Snake River is an interstate water
9 which is susceptible to use in interstate and foreign commerce, and thus is a “navigable water” as
10 defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water of the United
11 States” as defined in 40 C.F.R. § 122.2. Therefore, Cedar Draw is a “navigable water” as
12 defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water of the United
13 States” as defined in 40 C.F.R. § 122.2.

14 3.8. Section VI.C.2 of the Expired Permit and Section II.A of the Current Permit
15 establish effluent limitations for the discharge from Outfall 001. When a permittee exceeds a
16 monthly average effluent limit, the permittee is deemed to be in violation of that effluent limit
17 each of the days of the month in which the violations occurred. When a permittee exceeds a
18 daily maximum effluent limit, the exceedance is counted as one violation.

19 3.9. Section V.A of the Current Permit states that “[s]amples and measurements must
20 be representative of the volume and nature of the monitored discharge The samples must be
21 analyzed in accordance with Part V.C....” Section V.C. of the Current Permit states that
22 “[m]onitoring must be conducted according to test procedures approved under 40 CFR Part
23 136....” Between December 2007 and March 2009, Respondent failed to follow the test
24
25

1 procedures set forth in 40 C.F.R. Part 136 for total residual chlorine ("TRC") in violation of
2 Sections V.A. and V.C of the Current Permit, constituting fifteen (15) violations.

3 3.10. Section II.E of the Current Permit requires Respondent to monitor various
4 pollutants in effluent from the Facility on a monthly basis. In June 2008, Respondent failed to
5 monitor the Facility's effluent for biochemical oxygen demand ("BOD"), total suspended solids
6 ("TSS"), total phosphorus, ammonia, oil and grease, and TRC, in violation of Section II.E of the
7 Current Permit, constituting six (6) violations.

8 3.11. Section II.A of the Current Permit contains an average monthly effluent limit for
9 TSS in discharges from the Facility of 20.3 lbs/day. Between December 2007 and March 2009,
10 Respondent violated the average monthly effluent limit for TSS a total of four (4) months,
11 *constituting 121 violations. The violations are as follows:*

Month	Violations
January 2008	31
February 2008	29
March 2008	31
April 2008	30

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17 3.12. Section II.A. of the Current Permit contains a daily maximum effluent limit for
18 pH in discharges from the Facility of between 6.5-9.0. On May 28, 2008 and July 9, 2008,
19 Respondent violated the daily maximum effluent limit for pH, constituting two (2) violations.

20 3.13. Section VI.E.8 of the Expired Permit states that "[s]amples and measurements
21 shall be representative of the volume and nature of the monitored ... effluent." Section VI.E.7 of
22 the Expired Permit requires a permittee to use test procedures approved under 40 C.F.R. Part 136
23 when sampling the effluent from a facility. Section VI.D.2 of the Expired Permit requires
24 Respondent to conduct quarterly sampling for TRC. Between July 2004 and December 2007,
25 Respondent failed to follow the test procedures set forth in 40 C.F.R. Part 136 for TRC in

1 violation of Sections VI.E.8, VI.E.7, and VI.D.2 of the Expired Permit, constituting fourteen (14)
2 violations.

3 3.14. Section VIII.D.1 of the Expired Permit requires the permittee to report any
4 exceedance of an effluent limit by telephone within twenty-four hours from the time the
5 permittee becomes aware of the exceedance. Between July 2004 and December 2007,
6 Respondent failed to report the exceedance of an effluent limit by telephone within twenty-four
7 hours of the time Respondent became aware of the exceedance on five (5) occasions, constituting
8 five (5) violations. The violations are as follows:

Violations of Section VIII.D.1	
October 2005	1
March 2006	1
April 2006	1
July 2006	1
January 2007	1

14 3.15. Section VIII.D.2 of the Expired Permit requires the permittee to provide a written
15 submission of any exceedance of an effluent limit within five (5) business days of the time the
16 permittee becomes aware of the exceedance. Between July 2004 and December 2007,
17 Respondent failed to submit a written submission of the exceedance of an effluent limit within
18 five (5) business days of the time Respondent became aware of the exceedance on five (5)
19 occasions, constituting five (5) violations. The violations are as follows:

Violations of Section VIII.D.2	
October 2005	1
March 2006	1
April 2006	1
July 2006	1
January 2007	1

1 3.16. Section VI.D.1 of the Expired Permit establishes an average monthly effluent
2 limit for TSS in discharges from the Facility of 1.88 lbs/day. Between July 2004 and December
3 2007, Respondent violated the average monthly effluent limit for TSS in January 2007,
4 constituting 31 violations.

5 3.17. Section VI.D.1 of the Expired Permit establishes an average monthly effluent
6 limit for BOD in discharges from the Facility of 1.88 lbs/day. Between July 2004 and December
7 2007, Respondent violated the average monthly effluent limit for BOD a total of four (4) months,
8 constituting 123 violations. The violations are as follows:

9

October 2005	31
March 2006	31
April 2006	30
July 2006	31

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14 3.18. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an
15 administrative penalty when EPA finds that “any person ... has violated any permit condition or
16 limitation ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
17 Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent
18 is liable for the administrative assessment of civil penalties for violations at the Facility in an
19 amount not to exceed \$16,000 per day for each day during which the violation continues, up to a
20 maximum of \$177,500.

21 **IV. CONSENT AGREEMENT**

22 4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged
23 herein.

24 4.2. Respondent expressly waives any right to contest the allegations and to appeal the
25 Final Order set forth in Part V, below.

1 4.3. Respondent neither admits nor denies the specific factual allegations contained in
2 Part III of this CAFO.

3 4.4. As required under CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has
4 taken into account the nature, circumstances, extent and gravity of the alleged violations as well
5 as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors.
6 After considering these factors, EPA has determined and Respondent agrees that to pay a penalty
7 of Ninety-Eight Thousand and Two Dollars (\$98,002) to settle this action.

8 4.5. Respondent consents to issuance of the Final Order set forth in Part V, below, and
9 agrees to pay the total civil penalty set forth in Paragraph 4.4, above, within thirty (30) days of
10 the effective date of the Final Order.

11 4.6. Payment under this CAFO shall be made by cashier's check or certified check,
12 payable to the order of "Treasurer, United States of America" and delivered to the following
13 address:

14 U.S. Environmental Protection Agency
15 Region 10
16 Fines and Penalties
17 Cincinnati Finance Center
18 PO Box 979077
19 St. Louis, MO 63197-9000

20 Respondent shall note on the check the title and docket number of this action.

21 4.7. Respondent shall serve photocopies of the check described in Paragraph 4.6,
22 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
23 Enforcement at the following addresses:

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

1 U.S. Environmental Protection Agency
2 Region 10
3 Office of Compliance and Enforcement
4 Attn: Chris Gebhardt
5 1200 Sixth Avenue, Suite 900, OCE-133
6 Seattle, WA 98101

7 4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by the due
8 date set forth in Paragraph 4.5, above, the entire unpaid balance of penalty and accrued interest
9 shall become immediately due and owing. If Respondent fails to pay the penalty assessed,
10 Respondent may be subject to a civil action to collect the assessed penalty under the CWA,
11 together with interest, fees, costs, and additional penalties described below. In any collection
12 action, the validity, amount and appropriateness of the penalty shall not be subject to review.

13 4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in
14 full by the due date set forth in Paragraph 4.5, above, Respondent shall be responsible for
15 payment of the amounts described below:

16 4.9.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.
17 § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate
18 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the
19 effective date of the Final Order set forth in Part V, below, provided, however, that no
20 interest shall be payable on any portion of the assessed penalty that is paid within thirty
21 (30) days of the effective date of the Final Order.

22 4.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
23 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a
24 timely basis the amount of the penalty set forth in Paragraph 4.4, above, Respondent shall
25 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

1 such failure persists. Such nonpayment penalty shall be in an amount equal to twenty
2 percent (20%) of the aggregate amount of Respondent's penalties and nonpayment
3 penalties which are unpaid as of the beginning of such quarter.

4 4.10. The penalty described in Paragraph 4.4, above, including any additional costs
5 incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA
6 and shall not be deductible for purposes of federal taxes.

7 4.11. The undersigned representative of Respondent certifies that he or she is fully
8 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
9 document.

10 4.12. Except as described in Paragraph 4.9.2, above, each party shall bear its own costs
11 in bringing or defending this action.

12 4.13. The provisions of this CAFO shall bind each Respondent and its agents, servants,
13 employees, successors and assigns.

14 4.14. The above provisions are STIPULATED AND AGREED upon by Respondent
15 and EPA.

16 DATED:

17 April 12, 2010

RAINBOW TROUT COMPANY:

Gregory Karlo

18 Signature

19 Print Name: GREGORY KARLO

20 Title: V.P. of

21 DATED:

22 4/15/2010

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Edward J. Kowalski

23 EDWARD J. KOWALSKI

24 Director

Office of Compliance and Enforcement

25 For Complainant

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V. FINAL ORDER

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

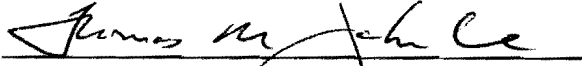
5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or 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, applicable CWA regulations, and/or any permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been giving the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have elapsed since the issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

1 5.5. This Final Order shall become effective upon filing.
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3 SO ORDERED this 22 day of August, 2010.
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6 THOMAS M. JAHNKE
7 Regional Judicial Officer
8 U.S. Environmental Protection Agency
9 Region 10
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached CONSENT AGREEMENT AND FINAL ORDER In the Matter of: Rainbow Trout Farms, Inc., DOCKET NO. CWA-10-2010-0015, was filed with the Regional Hearing Clerk on Aug. 3, 2010.

On Aug. 3, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Jessica A. Barkas, Assistant Regional Counsel
U.S. EPA
Region 10, Suite 900
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 Aug. 3, 2010, to:

Gregory Kaslo
Rainbow Trout Farms, Inc.
1301 South Vista Avenue
Boise, Idaho 83705

DATED this 3rd day of August 2010.

Sharon Eng
Signature
Print Name: Sharon Eng
Regional Hearing Clerk
EPA Region 10