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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. CWA-10-2011-0100
)
)
CITY OF ELK RIVER, IDAHO,)
) **CONSENT AGREEMENT AND**
) **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 has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 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 issues, and the City of Elk River, Idaho (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 22.45(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 has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), 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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. CWA Section 502(12), 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.” 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. “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. Respondent is a city duly organized and existing under the laws of Idaho. 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).

3.3. Respondent owns and operates a wastewater treatment facility (Facility) located on Landing Road in Elk River, Idaho.

3.4. During the times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-002036-2 (Permit). The Permit became effective on May 1, 2004 and expired on April 30, 2009. The City submitted a NPDES permit application on April 6, 2009; therefore, the Permit has been administratively extended pursuant to 40 C.F.R. § 122.6.

3.5. The Facility, which was under Respondent's control at all times relevant to this action, discharges domestic wastewater containing pollutants from Outfall 001 into Elk Creek.

3.6. Outfall 001 is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.7. Elk Creek flows into the Dworshak Reservoir which flows into the Clearwater River. The Clearwater River flows into the Snake River.

3.8. The Snake River is an interstate water which is susceptible to use in interstate and foreign commerce. Accordingly, the Snake River is a "navigable water" as defined in CWA Section 502(7), 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. § 122.2. Therefore, the Clearwater River, Dworshak Reservoir and Elk Creek are "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are "waters of the United States" as defined in 40 C.F.R. § 122.2.

3.9. By discharging domestic wastewater containing pollutants from the Facility into waters of the United States, 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).

3.10. Section I.A of the Permit establishes effluent limitations for the discharge from Outfall 001. These effluent limits include, but are not limited to, total suspended solids (TSS), biochemical oxygen demand (BOD), *Escherichia coli* (E. coli), and total residual chlorine (TRC).

3.11. Section II.B of the Permit requires Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (DMR).

3.12. Respondent's DMRs from December 2005 to May 2010 shows that the Facility had 2,514 effluent limit violations of the Permit. When a permittee exceeds a monthly average 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 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 an instantaneous or daily maximum effluent limit, the violation is counted as one violation.

3.13. Section I.A of the Permit contains an average monthly concentration effluent limit for TSS in discharges from the Facility of 30 mg/L. Between December 2005 and May 2010, Respondent violated the average monthly concentration effluent limit for TSS a total of 6 times, constituting 182 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2005	31
January 2006	31
November 2006	30
December 2006	31
January 2007	31
February 2007	28

3.14. Section I.A of the Permit contains an average monthly mass effluent limit for TSS in discharges from the Facility of 20 lbs/day. Between December 2005 and May 2010, Respondent violated the average monthly mass effluent limit for TSS a total of 7 times, constituting 215 violations. The violations are as follows:

Month of Violation	Number of Violations
November 2006	30
December 2006	31
January 2007	31
January 2009	31
May 2009	31
April 2010	30
May 2010	31

3.15. Section I.A of the Permit contains an average monthly removal requirement for TSS in discharges from the Facility that requires that the monthly average effluent concentration does not exceed 15% of the monthly average influent concentration. Between December 2005 and May 2010, Respondent violated the monthly average removal requirement for TSS a total of 2 times, constituting 62 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2005	31
May 2009	31

3.16. Section I.A of the Permit contains an average weekly concentration effluent limit for TSS in discharges from the Facility of 45 mg/L. Between December 2005 and May 2010, Respondent violated the average weekly concentration effluent limit a total of 5 times, constituting 35 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2005	7
January 2006	7
November 2006	7
December 2006	7
January 2007	7

3.17. Section I.A of the Permit contains an average weekly mass effluent limit for TSS in discharges from the Facility of 30 lbs/day. Between December 2005 and May 2010, Respondent violated the average weekly mass effluent limit for TSS a total of 2 times, constituting 14 violations. The violations are as follows:

Month of Violation	Number of Violations
November 2006	7
December 2006	7

3.18. Section I.A of the Permit contains an average monthly concentration effluent limit for BOD in discharges from the Facility of 30 mg/L. Between December 2005 and May 2010, Respondent violated the average monthly concentration effluent limit for BOD a total of 4 times, constituting 121 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2006	31
January 2008	31
February 2008	29
April 2008	30

3.19. Section I.A of the Permit contains an average monthly mass effluent limit for BOD in discharges from the Facility of 20 lbs/day. Between December 2005 and May 2010, Respondent violated the average monthly mass effluent limit for BOD a total of 6 times, constituting 180 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2008	31
February 2008	29
March 2008	31
April 2008	30
January 2010	31
February 2010	28

3.20. Section I.A of the Permit contains an average monthly removal requirement for BOD in discharges from the Facility that requires that the monthly average effluent concentration does not exceed 15% of the monthly average influent concentration. Between December 2005 and May 2010, Respondent violated the average monthly removal requirement for BOD a total of 6 times, constituting 184 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2007	31
January 2008	31
March 2008	31
April 2008	30
March 2009	31
April 2009	30

3.21. Section I.A of the Permit contains an average weekly concentration effluent limit for BOD in discharges from the Facility of 45 mg/L. Between December 2005 and May 2010, Respondent violated the average weekly concentration effluent limit for BOD a total of 3 times, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2006	7
February 2007	7

Month of Violation	Number of Violations
April 2008	7

3.22. Section I.A of the Permit contains an average weekly mass effluent limit for BOD in discharges from the Facility of 30 lbs/day. Between December 2005 and May 2010, Respondent violated the average weekly concentration effluent limit for BOD a total of 4 times, constituting 28 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2008	7
February 2008	7
March 2008	7
April 2008	7

3.23. Section I.B of the Permit contains an interim average monthly concentration effluent limit for TRC in discharges from the Facility of 0.5 mg/L. Between December 2005 and May 2010, Respondent violated the interim average monthly concentration effluent limit for TRC a total of 9 times, constituting 270 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2006	28
April 2006	30
May 2006	31
November 2006	30
December 2006	31
January 2007	31
February 2007	28
March 2007	31
April 2007	30

3.24. Section I.B of the Permit contains an interim average weekly concentration effluent limit for TRC in discharges from the Facility of 0.75 mg/L. Respondent violated the

interim average weekly concentration effluent limit for TRC in April 2007, constituting 7 violations.

3.25. Section I.A of the Permit contains an average monthly concentration effluent limit for TRC in discharges from the Facility of 0.01 mg/L. Between December 2005 and May 2010, Respondent violated the average monthly concentration effluent limit for TRC a total of 18 times, constituting 546 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2007	31
January 2008	31
February 2008	29
March 2008	31
April 2008	30
May 2008	31
June 2008	30
December 2008	31
January 2009	31
February 2009	28
March 2009	31
April 2009	30
May 2009	31
January 2010	31
February 2010	28
March 2010	31
April 2010	30
May 2010	31

3.26. Section I.A of the Permit contains an average monthly mass effluent limit for TRC in discharges from the Facility of 0.01 lbs/day. Between December 2005 and May 2010,

Respondent violated the average monthly mass effluent limit for TRC a total of 18 times, constituting 546 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2007	31
January 2008	31
February 2008	29
March 2008	31
April 2008	30
May 2008	31
June 2008	30
December 2008	31
January 2009	31
February 2009	28
March 2009	31
April 2009	30
May 2009	31
January 2010	31
February 2010	28
March 2010	31
April 2010	30
May 2010	31

3.27. Section I.A of the Permit contains a daily maximum concentration effluent limit for TRC in discharges from the Facility of 0.02 mg/L. Between December 2005 and May 2010, Respondent violated the daily maximum concentration effluent limit for TRC a total of 18 times, constituting 18 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2007	1

Month of Violation	Number of Violations
January 2008	1
February 2008	1
March 2008	1
April 2008	1
May 2008	1
June 2008	1
December 2008	1
January 2009	1
February 2009	1
March 2009	1
April 2009	1
May 2009	1
January 2010	1
February 2010	1
March 2010	1
April 2010	1
May 2010	1

3.28. Section I.A of the Permit contains a daily maximum mass effluent limit for TRC in discharges from the Facility of 0.01 lbs/day. Between December 2005 and May 2010, Respondent violated the daily maximum mass effluent limit for TRC a total of 18 times, constituting 18 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2007	1
January 2008	1
February 2008	1
March 2008	1
April 2008	1
May 2008	1
June 2008	1
December 2008	1

Month of Violation	Number of Violations
January 2009	1
February 2009	1
March 2009	1
April 2009	1
May 2009	1
January 2010	1
February 2010	1
March 2010	1
April 2010	1
May 2010	1

3.29. Section I.A of the Permit contains an average monthly effluent limit for E. coli in discharges from the Facility of 126 colonies/100 ml. Between December 2005 and May 2010, Respondent violated the monthly average effluent limit for E. coli a total of 2 times, constituting 60 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2008	29
May 2009	31

3.30. Section I.A of the Permit contains an instantaneous maximum effluent limit for E. coli in discharges from the Facility of 406 colonies/100 ml. Between December 2005 and May 2010, Respondent violated the instantaneous maximum effluent limit for E. coli a total of 7 times, constituting 7 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2006	1
April 2006	1
December 2006	1
January 2007	1
February 2008	1

Month of Violation	Number of Violations
May 2009	1
January 2010	1

3.31. Under CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person ... has violated any permit condition or limitation ... in a permit issued” pursuant to CWA Section 402, 33 U.S.C. § 1342. Consequently under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act, as amended, 24 U.S.C. § 2461 note, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$11,000 per day for each violation that occurred on or after March 15, 2004 through January 12, 2009, and \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of 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 \$1,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail 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 deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

David Domingo
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, 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 309(g)(9) of the CWA, 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 set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 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 twenty percent (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. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

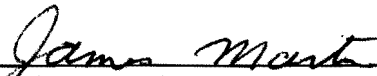
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

FOR CITY OF ELK RIVER, IDAHO:

6/22/11

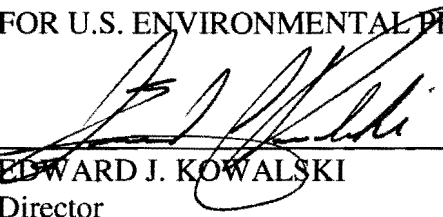


JAMES MARTIN
Mayor

DATED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

7/6/2011



EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

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.

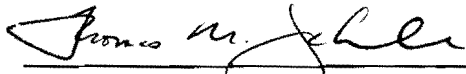
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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. 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 given 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), 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.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 27th day of August, 2011.



THOMAS M. JAHNKE
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 **In the Matter of: City of Elk River, Idaho, DOCKET NO.: CWA-10-2011-0100** was filed with the Regional Hearing Clerk on August 29, 2011.

On August 29, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Weber, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 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 August 29, 2011, to:

James Martin, Mayor
City of Elk River
P.O. Box H
112 South 2nd Street
Elk River, Idaho 83827

DATED this 29th day of August 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10