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EPA REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Troy, Idaho,

Respondent.

DOCKET NO. CWA-10-2019-0059

**CONSENT AGREEMENT**

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement 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. 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 Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of Troy (“Respondent”) agrees to the issuance of, the Final Order attached to this Consent Agreement.

**II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, 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 Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

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

3.2. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

3.3. Section 502(12) of the CWA, 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). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. §§ 122.2 & 110.1 (2014).

3.4. Respondent is 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).

3.5. Respondent is the owner and/or operator of a wastewater treatment plant (“Facility”) located in Troy, Idaho.

3.6. NPDES Permit ID-002360-4 (“WWTP Permit”) was issued to Respondent on March 5, 2004. The WWTP Permit became effective on May 1, 2004 and was set to expire on April 30, 2009. Respondent did not submit a timely and complete application to renew the Permit and the Permit expired on April 30, 2009.

3.7. Respondent failed to apply for a new permit in a timely manner as required by 40 C.F.R. § 122.21(d) and Part IV.B of the Permit. Due to Respondent’s failure to submit a timely application, the Permit was neither administratively extended nor reissued. Nonetheless, Respondent continued operating pursuant to the WWTP Permit.

3.8. The Facility, which was under Respondent’s control at all times relevant to this action, discharges pollutants from Outfall 001, which is located at latitude 46° 43’ 53” North and longitude 116° 45’ 22” West, into the West Fork Little Bear Creek. Outfall 001 is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.9. The Facility discharges domestic wastewater containing pollutants into West Fork Little Bear Creek which flows into the Potlatch River then to the Clearwater River and then into the Snake River. The West Fork Little Bear Creek is protected by the State of Idaho for cold water refuges, salmonid spawning, and secondary contact recreation. The West Fork Little Bear Creek and the Potlatch, Clearwater, and Snake Rivers are “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.10. At all times relevant to this action, Respondent has been discharging from the Facility without a valid permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.11. By discharging domestic wastewater containing pollutants from the Facility into waters of the United States, Respondent engaged in a “discharge of pollutants” from a point source

within the meaning of Sections 302(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

3.12. Section I.A of the expired WWTP Permit established effluent limitations for the discharge from Outfall 001 and includes limits for biochemical oxygen demand (BOD), total suspended solids (TSS), total residual chlorine (TRC), *Escherichia coli* (*E. coli*) bacteria, and pH.

3.13. Section II.B of the expired WWTP Permit required Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (“DMR”).

3.14. Respondent submitted an application to EPA for renewal of the expired WWTP Permit in 2012 and EPA determined the Respondent’s application was complete in 2013 but did not thereafter renew the WWTP Permit and has not since done so due to no fault of Respondent.

3.15. At all times relevant to this action, Respondent submitted DMRs in accordance with the WWTP Permit, despite its expiration, consistent with an Order issued by Complainant dated March 10, 2014.

3.16. Respondent’s DMRs reflect that the Facility would have violated effluent limitations set forth in the WWTP Permit for 22 months of the time period spanning December 2013 through June 2018, had the WWTP Permit been renewed by EPA.

3.17. Respondent’s discharges of wastewater in excess of effluent limitations from the Facility to West Fork Little Bear Creek were a violation of Section 301(a) the CWA, 33 U.S.C. § 1311(a).

3.18. Under Section 309(g) of the CWA, 33 U.S.C § 1319(g), whenever on the basis of any information the Administrator finds that any person has violated 33 U.S.C. § 1311 by discharging a pollutant without a permit or has violated any permit condition or permit limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator may assess a Class I or Class II civil penalty.

#### **IV. CONSENT AGREEMENT**

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

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this Consent Agreement.

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 violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$7,250.

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 Consent Agreement 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 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Attn: Teresa Young

U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Attn: Stacey Kim

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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. Attorney's 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) attorney's 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 Consent Agreement 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 or raise affirmative defenses to the allegations contained herein and waives any right to appeal the Final Order to be issued accompanying this Consent Agreement.

4.12. The provisions of this Consent Agreement 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:

May 20, 2019

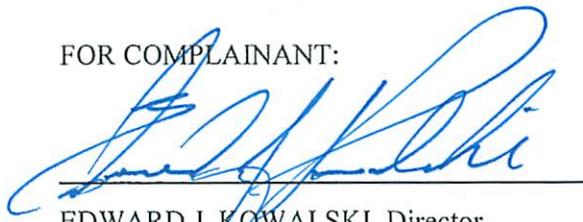
FOR RESPONDENT:

  
KENNETH WHITNEY, Jr., Mayor  
City of Troy

DATED:

5/23/2019

FOR COMPLAINANT:

  
EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Troy, Idaho,

Respondent.

DOCKET NO. CWA-10-2019-0059

**FINAL ORDER**

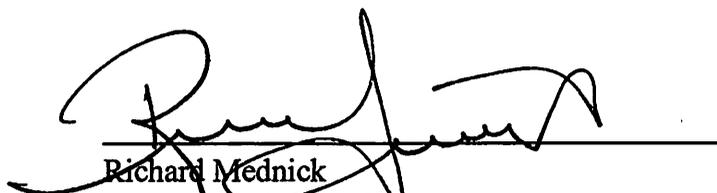
1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

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

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this 6<sup>th</sup> day of June, 2019.

A handwritten signature in black ink, appearing to read 'Richard Mednick', is written over a horizontal line.

Richard Mednick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: City of Troy, Idaho, Docket No. CWA-10-2019-0059**, was filed, and served as follows, on the signature date below.

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

William M. McLaren  
U.S. Environmental Protection Agency  
Region 10, M/S: 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101

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

The Honorable Kenneth Whitney, Jr.  
Mayor of the City of Troy  
P.O. Box 595  
519 South Main Street  
Troy, ID 83871

Susan R. Wilson  
Attorney at Law, PLLC  
208 South Main Street, Suite 2  
Moscow, ID 83843

June 7, 2019  
Dated

Teresa Young  
Teresa Young  
Regional Hearing Clerk  
EPA Region 10