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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2015-0072
	)	
City of Burley, Industrial Wastewater	)	<b>CONSENT AGREEMENT AND</b>
Treatment Plant, Burley, Idaho	)	<b>FINAL ORDER</b>
	)	
Respondent.	)	

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**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).

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 Burley (“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 (“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 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 National Pollutant Discharge Elimination System (“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 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). 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.

3.4 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 owns and/or operates an industrial wastewater treatment plant (“Facility”) located in Burley, Idaho.

3.6 At all times relevant to this action, Respondent was authorized to discharge treated industrial wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-000066-3 (“Permit”). The Permit became effective on June 1, 2009, and expired on May 31, 2014. A permit application was received and the Permit was administratively extended pursuant to 40 C.F.R. § 122.6.

3.7 The Facility discharges pollutants from Outfall 003 to the Snake River. Outfall 003 is a “point source” as defined in 40 C.F.R. § 122.2.

3.8 The Snake River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce. As such, the Snake River is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.9. Part I.B of the Permit establishes effluent limits for the discharges from Outfall 003. These effluent limits include, but are not limited to, total suspended solids (“TSS”); total phosphorus as P (“TP”); total ammonia as N (“TA”); floating, suspended, or submerged matter; and biochemical oxygen demand, five-day (“BOD<sub>5</sub>”).

3.10. Part III.B of the Permit requires Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (“DMR”).

3.11. Respondent’s DMRs from January 2012 to September 2014 indicate that the Facility had 1,690 violations of the effluent limits set forth in the Permit. When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the month in which the exceedance occurred that the facility was discharging effluent. 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 that the facility was discharging effluent. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation.

3.13. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.44 mgd, the average monthly concentration of BOD<sub>5</sub> in the effluent shall not exceed 30 mg/L. From January 2012 to September 2014, Respondent violated this limit 8 times, constituting 237 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	31
January 2013	31

Month of Violation	Number of Violations
February 2013	28
March 2013	31
April 2013	30
May 2013	31
June 2013	24
August 2013	31

3.14. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.44 mgd, the average weekly concentration of BOD<sub>5</sub> in the effluent shall not exceed 45 mg/L. From January 2012 to September 2014, Respondent violated this limit 9 times, constituting 63 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	7
January 2013	7
February 2013	7
March 2013	7
April 2013	7
May 2013	7
June 2013	7
August 2013	7
January 2014	7

3.15. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is less than 0.44 mgd, the average monthly loading of BOD<sub>5</sub> in the effluent shall not exceed 110

lb/day. From January 2012 to September 2014, Respondent violated this limit 2 times, constituting 61 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2012	31
April 2012	30

3.16. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is less than 0.44 mgd, the average weekly loading of BOD<sub>5</sub> in the effluent shall not exceed 165 lb/day. From January 2012 to September 2014, Respondent violated this limit 3 times, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2012	7
March 2012	7
April 2012	7

3.17. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.44 mgd, the average monthly loading of BOD<sub>5</sub> in the effluent shall not exceed 600 lb/day. From January 2012 to September 2014, Respondent violated this limit 2 times, constituting 62 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	31

Month of Violation	Number of Violations
August 2013	31

3.18. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.44 mgd, the average weekly loading of BOD<sub>5</sub> in the effluent shall not exceed 901 lb/day. From January 2012 to September 2014, Respondent violated this limit 2 times, constituting 14 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	7
August 2013	7

3.19. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.44 mgd, the average monthly percent removal of BOD<sub>5</sub> from the influent shall be at least 85%. From January 2012 to September 2014, Respondent violated this limit 1 time, constituting 31 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	31

3.21. Part I.B.1 of the Permit specifies that the average monthly loading of TP in the effluent shall not exceed 359 lb/day. From January 2012 to September 2014, Respondent violated this limit 4 times, constituting 122 violations. The violations are as follows:

Month of Violation	Number of Violations
August 2013	31
November 2013	30
December 2013	31
June 2014	30

3.22. Part I.B.1 of the Permit specifies that the average weekly loading of TP in the effluent shall not exceed 539 lb/day. From January 2012 to September 2014, Respondent violated this limit 2 times, constituting 14 violations. The violations are as follows:

Month of Violation	Number of Violations
November 2013	7
June 2014	7

3.23. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.55 mgd, the average monthly concentration of TSS in the effluent shall not exceed 30 mg/L. From January 2012 to September 2014, Respondent violated this limit 20 times, constituting 592 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	31
June 2012	30
July 2012	31
August 2012	31

Month of Violation	Number of Violations
September 2012	30
November 2012	30
December 2012	31
January 2013	31
February 2013	28
March 2013	31
April 2013	30
May 2013	31
June 2013	24
August 2013	31
September 2013	30
October 2013	31
December 2013	31
January 2014	31
February 2014	28
March 2014	21

3.24. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.55 mgd, the average weekly concentration of TSS in the effluent shall not exceed 45 mg/L. From January 2012 to September 2014, Respondent violated this limit 19 times, constituting 133 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	7
June 2012	7
July 2012	7

Month of Violation	Number of Violations
August 2012	7
September 2012	7
December 2012	7
January 2013	7
February 2013	7
March 2013	7
April 2013	7
May 2013	7
June 2013	7
August 2013	7
September 2013	7
October 2013	7
November 2013	7
January 2014	7
March 2014	7
May 2014	7

3.25. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is less than 0.55 mgd, the average monthly loading of TSS in the effluent shall not exceed 138 lb/day. From January 2012 to September 2014, Respondent violated this limit 2 times, constituting 61 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2012	31
April 2012	30

3.26. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is less than 0.55 mgd, the average weekly loading of TSS in the effluent shall not exceed 207 lb/day. From January 2012 to September 2014, Respondent violated this limit 2 times, constituting 14 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2012	7
April 2012	7

3.27. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.55 mgd, the average monthly loading of TSS in the effluent shall not exceed 600 lb/day. From January 2012 to September 2014, Respondent violated this limit 6 times, constituting 185 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	31
January 2013	31
March 2013	31
April 2013	30
May 2013	31
August 2013	31

3.28. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.55 mgd, the average weekly loading of TSS in the effluent shall not

exceed 901 lb/day. From January 2012 to September 2014, Respondent violated this limit 7 times, constituting 49 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	7
December 2012	7
January 2013	7
March 2013	7
April 2013	7
May 2013	7
August 2013	7

3.29. Part I.B.1 of the Permit specifies that when the monthly average effluent flow is greater than or equal to 0.55 mgd, the average monthly percent removal of TSS from the influent shall be at least 85%. From January 2012 to September 2014, Respondent violated this limit 1 time, constituting 31 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	31

During the violations period set forth above, Respondent made good-faith efforts to come into compliance with the Permit.

#### 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 \$14,000.

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:

By U.S. Postal Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

By UPS, Federal Express or overnight mail:

U.S. Bank Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
St. Louis, MO 63101

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

Chae Park  
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.

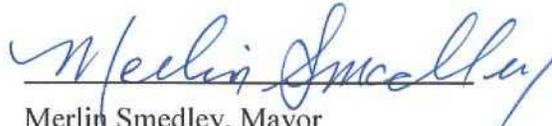
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

4-27-2015

FOR RESPONDENT:

  
Merlin Smedley, Mayor  
City of Burley

DATED:

5/4/2015

FOR COMPLAINANT:

  
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.

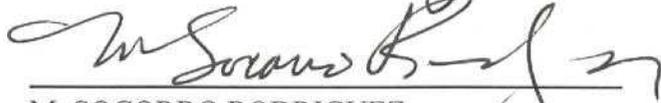
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 1<sup>st</sup> day of June, 2015.



M. SOCORRO RODRIGUEZ  
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 the Matter of: City of Burley, Industrial Wastewater Treatment Plant, Burley, Idaho, Docket No.: CWA-10-2015-0072**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

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

Ashley Palomaki, Esquire  
U.S. 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 to:

Merlin Smedley, Mayor  
c/o David F. Shirley  
Parsons, Smith, Stone, Loveland & Shirley, LLP  
137 West 13<sup>th</sup> Street  
P.O. Box 910  
Burley, Idaho 83318

DATED this 2<sup>nd</sup> day of June, 2015



Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10