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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF ELK RIVER, WASTEWATER  
TREATMENT FACILITY,  
Elk River, Idaho,

Respondent.

**DOCKET NO. CWA-10-2016-0126**

**CONSENT AGREEMENT AND  
FINAL ORDER**

**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 “the 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 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) 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 (“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 Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

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

### Statutory and Regulatory Background

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutants 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, provides that the Administrator of EPA may issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, into the waters of the United States, subject to certain requirements of the CWA and upon such terms and conditions as the Administrator may prescribe.

3.3. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States” under Section 502(7) of the Act, 33 U.S.C. § 1362(7). “Waters of the United States” include all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; the territorial seas; and all impoundments and tributaries of such waters.  
40 C.F.R. § 122.2.

3.4. A “pollutant,” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), includes, in part, “rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

3.5. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” to include, among others, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container ... from which pollutants are or may be discharged.”

#### **Factual Background**

3.6. Respondent is a “municipality” as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.7. Respondent owns and/or operates a wastewater treatment plant (“Facility”) located in Elk River, Idaho.

3.8. At all times relevant to this action, Respondent was authorized to discharge treated wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID0020362 (“Permit”). The Permit became effective on May 1, 2004, and expired on April 30,

2009. A permit application was received and the Permit was administratively extended on May 6, 2009, pursuant to 40 C.F.R. § 122.6.

3.9. The Facility discharges pollutants from Outfall 001 to the Elk Creek. Outfall 001 is a “point source” as defined in 40 C.F.R. § 122.2.

3.10. The Elk Creek flows to the Clearwater River, which is a tributary to the Snake River and 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.

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

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

3.13. 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. Since June 2011, Respondent’s DMRs indicate that the Facility had 2,616 violations of the effluent limits set forth in the Permit.

3.14. Part I.A.1 of the Permit specifies that the instantaneous maximum limit of *E. coli* in the effluent shall not exceed 406/100 ml. Since June 2011, Respondent exceeded the

instantaneous maximum limit for *E. coli* two times, constituting two violations. The violations are as follows:

Month of Violation	Number of Violations
December 2012	1
March 2013	1

3.15. Part I.A.1 of the Permit specifies that the average monthly limit of *E. coli* in the effluent, reported as a geometric mean, shall not exceed 126/100 ml. Since June 2011, Respondent exceeded the monthly geometric mean for *E. coli* one time, constituting 31 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2013	31

3.16. Part I.A.1 of the Permit specifies that the average weekly loading of total BOD in the effluent shall not exceed 30 lbs/day. Since June 2011, Respondent exceeded the average weekly loading limit for total BOD one time, constituting seven violations. The violations are as follows:

Month of Violation	Number of Violations
January 2013	7

3.17. Part I.A.1 of the Permit specifies that the average weekly concentration of total BOD in the effluent shall not exceed 45 mg/L. Since June 2011, Respondent exceeded the average weekly concentration limit for BOD one time, constituting seven violations. The violations are as follows:

Month of Violation	Number of Violations
January 2013	7

3.18. Part I.A.1 of the Permit specifies that the average monthly loading of total BOD in the effluent shall not exceed 20 lbs/day. Since June 2011, Respondent exceeded the average monthly loading limit for total BOD six times, constituting 183 violations. These violations are as follows:

Month of Violation	Number of Violations
January 2012	31
February 2012	29
March 2012	31
November 2012	30
January 2013	31
January 2014	31

3.19. Part I.A.1 of the Permit specifies that the average monthly concentration of total BOD in the effluent shall not exceed 30 mg/L. Since June 2011, Respondent exceeded the average monthly concentration limit for total BOD one time, constituting 31 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2013	31

3.20. Part I.A.4 of the permit specifies that for each month, the monthly average effluent concentration of BOD shall not exceed 15% of the monthly average influent concentration. This represents a minimum 85% removal requirement. Since June 2011,

Respondent did not meet the 85% average monthly removal of BOD eight times, constituting 246 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2012	31
April 2012	30
January 2013	31
March 2013	31
January 2014	31
March 2014	31
April 2014	30
May 2014	31

3.21. Part I.A.1 of the Permit specifies that the average weekly loading of TSS in the effluent shall not exceed 30 lbs/day. Since June 2011, Respondent exceeded the average weekly loading limit for total TSS three times, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
November 2012	7
March 2013	7
April 2013	7

3.22. Part I.A.1 of the Permit specifies that the average weekly concentration of TSS in the effluent shall not exceed 45 mg/L. Since June 2011, Respondent exceeded the average weekly concentration limit for total TSS one time, constituting seven violations. The violations are as follows:

Month of Violation	Number of Violations
April 2013	7

3.23. Part I.A.1 of the Permit specifies that the average monthly loading of TSS in the effluent shall not exceed 20 lbs/day. Since June 2011, Respondent exceeded the average monthly loading limit for total TSS ten times, constituting 305 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2012	31
February 2012	29
November 2012	30
December 2012	31
March 2013	31
April 2013	30
May 2013	31
January 2014	31
March 2014	31
April 2014	30

3.24. Part I.A.1 of the Permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 30 mg/L. Since June 2011, Respondent exceeded the average monthly concentration limit TSS three times, constituting 91 violations. The violations are as follows:

Month of Violation	Number of Violations
November 2012	30
March 2013	31
April 2013	30

3.25. Part I.A.4 of the Permit specifies that for each month, the monthly average effluent concentration of TSS shall not exceed 15% of the monthly average influent

concentration. This represents a minimum 85% removal requirement. Since June 2011, Respondent did not meet the 85% average monthly removal of TSS six times, constituting 183 violations. The violations are as follows:

Month of Violation	Number of Violations
April 2012	30
November 2012	30
March 2013	31
April 2013	30
March 2014	31
May 2014	31

3.26. Part I.A.1 of the Permit specifies that the maximum daily loading of TRC in the effluent shall not exceed 0.01 lbs/day. Since June 2011, Respondent exceeded the maximum daily loading limit for TRC 24 times, constituting 24 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2011	1
January 2012	1
February 2012	1
March 2012	1
April 2012	1
May 2012	1
November 2012	1
December 2012	1
January 2013	1
February 2013	1
March 2013	1
April 2013	1
May 2013	1
December 2013	1
January 2014	1

Month of Violation	Number of Violations
February 2014	1
March 2014	1
April 2014	1
May 2014	1
December 2014	1
January 2015	1
February 2015	1
March 2015	1
April 2015	1

3.27. Part I.A.1 of the Permit specifies that the maximum daily concentrations of TRC in the effluent shall not exceed 0.02 mg/L. Since June 2011, Respondent exceeded the maximum daily concentration limit for TRC 24 times, constituting 24 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2011	1
January 2012	1
February 2012	1
March 2012	1
April 2012	1
May 2012	1
November 2012	1
December 2012	1
January 2013	1
February 2013	1
March 2013	1
April 2013	1
May 2013	1
December 2013	1
January 2014	1

Month of Violation	Number of Violations
February 2014	1
March 2014	1
April 2014	1
May 2014	1
December 2014	1
January 2015	1
February 2015	1
March 2015	1
April 2015	1

3.28. Part I.A.1 of the Permit specifies that the average monthly loading of TRC in the effluent shall not exceed 0.01 lbs/day. Since June 2011, Respondent exceeded the average monthly loading limit for TRC 24 times, constituting 727 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2011	30
January 2012	31
February 2012	29
March 2012	31
April 2012	30
May 2012	31
November 2012	30
December 2012	31
January 2013	31
February 2013	28
March 2013	31
April 2013	30
May 2013	31
December 2013	31
January 2014	31

Month of Violation	Number of Violations
February 2014	28
March 2014	31
April 2014	30
May 2014	31
December 2014	31
January 2015	31
February 2015	28
March 2015	31
April 2015	30

3.29. Part I.A.1 of the Permit specifies that the average monthly concentrations of TRC in the effluent shall not exceed 0.01 mg/L. Since June 2011, Respondent exceeded the average monthly concentration limit for TRC 24 times, constituting 727 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2011	30
January 2012	31
February 2012	29
March 2012	31
April 2012	30
May 2012	31
November 2012	30
December 2012	31
January 2013	31
February 2013	28
March 2013	31
April 2013	30
May 2013	31
December 2013	31
January 2014	31

Month of Violation	Number of Violations
February 2014	28
March 2014	31
April 2014	30
May 2014	31
December 2014	31
January 2015	31
February 2015	28
March 2015	31
April 2015	30

#### **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 \$4,659.

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 delivered 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 serve photocopies of the check described in Paragraph 4.5 on 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-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Raymond Andrews, Compliance Officer  
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 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 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 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 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 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 RESPONDENT:

7/19/16

James Martin (Mayor)

James Martin, Mayor  
City of Elk River, Wastewater Treatment Facility

DATED:

FOR COMPLAINANT:

8/2/2016

Edward J. Kowalski

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.

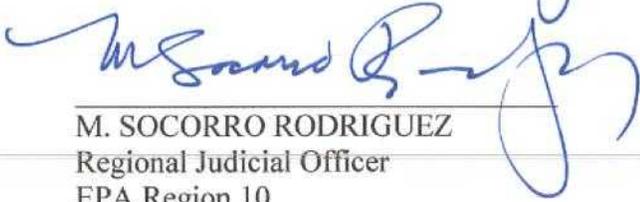
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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. 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 25<sup>th</sup> day of August, 2016.



A handwritten signature in blue ink, appearing to read 'M. Socorro Rodriguez', is written over a horizontal line. The signature is stylized and cursive.

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: CITY OF ELK RIVER WASTEWATER TREATMENT FACILITY, DOCKET NO.: CWA-10-2016-0126** was 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:

Heather Mapes  
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 aforementioned document was placed in the United States mail certified/return receipt to:

Mayor James Martin  
City of Elk River Wastewater Treatment Facility  
112 S. 2nd Street  
Elk River, Idaho 83827

DATED this 30 day of August, 2016

  
\_\_\_\_\_  
Signature

Teresa Luna  
Regional Hearing Clerk  
EPA Region 10