

EXHIBIT C

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

In the Matter of:

**City of Nezperce Wastewater Treatment
Plant
Nezperce, Idaho**

Respondent.

DOCKET NO. CWA-10-2018-0003

COMPLIANCE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1.1. This Compliance Order on Consent (“Order”) is entered into voluntarily by the City of Nezperce (“Respondent”) and is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 308 and 309(a) of the Clean Water Act (“Act”), 33 U.S.C. §§ 1318, 1319(a). This authority has been delegated to the Regional Administrator for EPA Region 10 and has been redelegated to the Director of the Office of Compliance and Enforcement.

1.2. Respondent waives any and all claims of relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect

to any issue of fact or law or any terms and conditions set forth in this Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

II. FINDINGS AND CONCLUSIONS

2.1. 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.

2.2. Section 402(a) of the Act, 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.

2.3. 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). 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. 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.

2.4. Respondent is a city duly organized and existing under the laws of the State 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).

2.5. Respondent owns and operates the City of Nezperce Wastewater Treatment Plant (the "Facility"), which is located in the City of Nezperce. The Facility provides secondary treatment for municipal sewage.

2.6. At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-002039-7 (the "Permit"). The Permit became effective on April 1, 2004 and expired on March 31, 2009. Respondent submitted a NPDES Permit application on October 12, 2008, and the Permit is administratively extended pursuant to 40 C.F.R. § 122.6.

2.7. The Facility discharges pollutants from an outfall labeled "Outfall 001" to Long Hollow Creek. Outfall 001 is a "point source" as defined in 40 C.F.R. § 122.2.

2.8. Long Hollow Creek joins with Holes Creek to form Little Canyon Creek, which flows into Big Canyon Creek. Big Canyon Creek is a tributary of Clearwater River. The Clearwater River is an interstate water that is susceptible to use in interstate and foreign commerce. Long Hollow Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. § 122.2.

2.9. By discharging 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(13), 33 U.S.C. §§ 1311(a) and 1362(12).

2.10. An authorized EPA representative inspected the Facility on April 18, 2016, to determine compliance with Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Permit. This inspection and a subsequent review of the Facility's Discharge Monitoring Reports identified long-term total suspended solids ("TSS") and 5-day biological oxygen demand ("BOD₅") violations.

2.11. Respondent has been actively working to remedy these violations by replacing sewer pipes in the City to reduce infiltration and inflow. Respondent has spent over \$240,000 towards sewer rehabilitation over the past six years.

III. ORDER ON CONSENT

3.1. Based upon the findings and conclusions in Part II of this Order and pursuant to Sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), it is AGREED and ORDERED as follows:

3.2. By May 31, 2020, Respondent must complete a Phase I study to identify additional locations for infiltration and inflow reduction projects and review secondary treatment performance. Within 30 days of completion of the Phase I study, Respondent must provide a written report to the EPA with the details of the study recommendations.

3.3. By December 31, 2021, Respondent must implement the recommendations of the Phase I study, including completion of infiltration and inflow reduction projects. Within 31 days of completion of implementation of the Phase I study, Respondent must provide a written report to the EPA with the details of the implementation.

3.4. From January 1, 2022 through December 31, 2022, Respondent will assess the results of work completed pursuant to Paragraph 3.3 ("assessment period"). If the City of Nezperce receives at least 19.5 inches of rainfall during the assessment period and effluent limits are being achieved, this Order shall terminate when the EPA receives a report from Respondent that states that the effluent limits are being achieved, as discussed in this paragraph. If the City of Nezperce does not receive 19.5 inches of rainfall during the assessment period, the assessment period will be extended until 19.5 inches of rainfall is achieved during a 12-month period, but no

later than May 31, 2024 (“extension period”). If the effluent limits are being achieved at the end of the extension period, this Order shall terminate when the EPA receives a report from Respondent that states that the effluent limits are being achieved, as discussed in this paragraph. Within 31 days of the end of the assessment period, Respondent must provide a written report to the EPA that details whether the City of Nezperce received at least 19.5 inches of rainfall during the assessment period and, if there was at least 19.5 inches of rainfall, whether effluent limits are being achieved and whether Phase II, as described in paragraph 3.5, is necessary. If the City of Nezperce did not receive 19.5 inches of rainfall during the assessment period, an additional report is due to EPA within 30 days of receiving 19.5 inches of rainfall during a 12-month period and no later than June 30, 2024. This report should detail whether effluent limits are being achieved and whether Phase II, as described in paragraph 3.5, is necessary.

3.5. If the effluent limits are not being achieved at the end of the assessment period or extension period, by February 29, 2028, Respondent shall complete project design plans, specifications, cost estimates, and a preliminary construction schedule for any necessary upgrades at the Facility (“Phase II”). Within 30 days of completion of Phase II planning, Respondent must provide a written report to the EPA with the details of the Facility upgrades.

3.6. By December 31, 2028, Respondent shall finish construction of all Phase II Facility upgrades and all Permit limits must be met. Within 31 days, Respondent must provide written notification to the EPA that construction is complete and that effluent limitations are being achieved.

3.7. Respondent shall submit progress reports that detail the progress made towards reaching compliance with TSS and BOD₅ effluent limits, including any work on reduction of

infiltration and inflow. The first report is due on January 31, 2018 and every year thereafter, until compliance with the TSS and BOD₅ effluent limits are achieved. At a minimum, the report must include:

- 3.7.1. A summary of the previous year of TSS and BOD₅ data and comparison to the effluent limitations;
- 3.7.2. A report on progress made towards meeting the effluent limitations; and
- 3.7.3. Further actions and milestones targeted for the upcoming year.

3.8. The following table outlines the deadline for each report potentially required by this Compliance Order on Consent in the event Respondent uses the entire time allocated for each milestone required by paragraphs 3.2, 3.3, 3.5, and 3.6, above. Respondent should use this table as a guide and refer to the paragraphs above to ensure compliance with this Compliance Order on Consent. If two reports are due on the same date, they can be combined.

Report Description	Paragraph Number	Due Date
Annual Progress Report	3.7	1/31/2018
Annual Progress Report	3.7	1/31/2019
Annual Progress Report	3.7	1/31/2020
Phase I Study Report	3.2	6/30/2020
Annual Progress Report	3.7	1/31/2021
Phase I Study Implementation Report	3.3	1/31/2022
Annual Progress Report	3.7	1/31/2022
Annual Progress Report	3.7	1/31/2023
Assessment Period Report	3.4	1/31/2023
Annual Progress Report	3.7	1/31/2024
Extension Period Report	3.4	6/30/2024
Annual Progress Report	3.7	1/31/2025
Annual Progress Report	3.7	1/31/2026
Annual Progress Report	3.7	1/31/2027
Annual Progress Report	3.7	1/31/2028
Phase II Planning Report	3.5	3/30/2028

Report Description	Paragraph Number	Due Date
Phase II Completion Report	3.6	1/31/2029

3.9. In the event Respondent is unable to comply with the requirements of this Compliance Order on Consent, Respondent shall, within ten (10) days of becoming aware of such inability, provide the following:

- 3.9.1. A summary of the specific reasons why Respondent is unable to comply with the requirement;
- 3.9.2. A summary of all actions taken by Respondent or others which Respondent alleges demonstrates “good faith efforts” to comply with the requirement; and
- 3.9.3. The expected date and required activities by which Respondent will comply with the requirement.

3.10. Notifications and submissions required by this Order must be sent to:

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-101
Seattle, Washington 98101
Attn: Raymond Andrews

3.11. EPA encourages Respondent to engage in informal discussion of the terms and requirements of this Order. Such discussions should address any questions Respondent has concerning compliance with this Order. Alternative methods to attain the objectives of this Order may be proposed. If acceptable to EPA, such proposals may be incorporated into amendments to this Order at EPA’s discretion.

3.12. Respondent admits the jurisdictional allegations contained in this Order. Respondent neither admits nor denies the specific factual findings and conclusions contained in this Order.

3.13. The undersigned representative of Respondent certifies that he is authorized to enter into the terms and conditions of this Order and to bind Respondent to this document.

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

3.15. This Order shall become effective on the date it is signed by EPA.

3.16. This Order shall terminate on December 31, 2022, or when Respondent achieves full compliance with the effluent limitations set forth in the Permit, whichever is later.

Respondent is anticipating that EPA will issue a new NPDES Permit in either 2017 or 2018 ("new Permit"). If and when EPA issues a new Permit and if the TSS and BOD₅ effluent limits are the same, EPA and Respondent will amend the Compliance Order on Consent to apply the terms to the new Permit.

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

IV. SANCTIONS

4.1 Notice is hereby given that violation of, or failure to comply with, any of the provisions of this ORDER may subject Respondents to: (1) civil penalties of up to \$37,500 per day of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; or (2) administrative penalties of up to \$16,000 per day for each violation, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19.

4.2 Nothing in this ORDER shall be construed to relieve Respondent of applicable requirements of federal, state, or local laws. EPA reserves the right to take enforcement action as authorized by law for any violation of this ORDER or any other applicable requirements

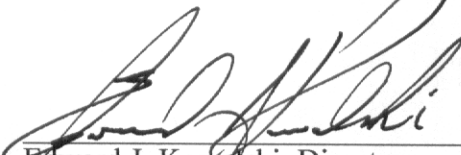
STIPULATED and AGREED this 6th day of November 2017:

FOR CITY OF NEZPERCE WASTEWATER TREATMENT PLANT:



Steve A. Bateman, Mayor
City of Nezperce

It is so ORDERED and AGREED this 28th day of November, 2017:



Edward J. Kowalski, Director
Office of Compliance and Enforcement
EPA, Region 10