

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF CRAIGMONT

Craigmont, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0062

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,320 per day for each day during which the violation continues, up to a maximum

penalty of \$278,995. *See also* 85 Fed. Reg. 1751 (January 13, 2020) (2020 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) 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 Craigmont (Respondent) agrees to 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 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

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

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

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, inter alia, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 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.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, inter alia, industrial, municipal, and agricultural waste discharged into water.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

3.7. CWA Section 502(7), 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States. In turn, “waters of the United States” is 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, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 120.2; 40 C.F.R. § 122.2 (1993).

3.8. CWA Section 402(a), 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.

General Allegations

3.9. Respondent is a “municipality” with jurisdiction over the disposal of sewage and other wastes and is a “person” under CWA Section 502 (4)-(5), 33 U.S.C. § 1362(4)-(5).

3.10. Respondent owns and/or operates the City of Craigmont Wastewater Treatment Plant (the “Facility”) located at the intersection of US-95 and Lauer Road in Craigmont, Idaho.

3.11. On February 14, 2005, EPA issued NPDES Permit No. ID 0021288, which became effective on April 1, 2005, expired on March 31, 2010, and was administratively extended pursuant to 40 C.F.R. § 122.6 (the “2005 Permit”). The 2005 Permit authorizes, subject to its terms and conditions, the discharge of municipal wastewater containing pollutants.

3.12. On April 21, 2020, EPA reissued NPDES Permit No. ID 0021288, which became effective on June 1, 2020 (the “2020 Permit”). The 2020 Permit authorizes, subject to its terms and conditions, the discharge of municipal wastewater containing pollutants.

3.1. At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to the 2005 Permit and 2020 Permit.

3.2. On August 6, 2019, an authorized representative of EPA conducted a compliance inspection of the Facility to determine Respondent's compliance with the 2005 Permit and CWA Sections 301 and 402, 33 U.S.C. § and 1342.

3.3. At the time of the inspection, the Facility discharged pollutants from Outfall 001, which discharges into John Dobb Creek. Outfall 001 is a "point source." 40 C.F.R. 122.2.

3.4. John Dobb Creek flows to Lawyer Creek, which flows to the Clearwater River, which flows to the Snake River, which flows to the Columbia River to the Pacific Ocean. John Dobb Creek is a tributary to an interstate water body that is susceptible to use to interstate commerce. As such, John Dobb Creek is a "navigable water" under Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and is a "water of the United States" within the meaning of 40 C.F.R. § 120.2; 40 C.F.R. § 122.2 (1993).

3.5. Respondent has discharged pollutants from a point source into waters of the United States at the Facility, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.6. At all times relevant to this action, Respondent was authorized to discharge municipal wastewater from the Facility under the 2005 Permit and the 2020 Permit.

Violations

3.7. Based on the inspection and EPA's review of Respondent's discharge monitoring reports (DMRs), EPA alleges that, after obtaining coverage under the 2005 Permit and 2020 Permit, Respondent violated certain terms and conditions of the 2005 Permit and 2020 Permit and therefore violated CWA Section 301, 33 U.S.C. § 1311.

3.8. Part I.A.1 and Table 1 of the 2005 Permit establish effluent limitations for the

discharge from Outfall 001 at the Facility. These effluent limitations include, but are not limited to, biochemical oxygen demand (BOD₅), total residual chlorine (“TRC”), total suspended solids (“TSS”), and E. coli bacteria (“E. coli”).

3.9. Part I.B.1. and Table 1 of the 2020 Permit establish effluent limitations for the discharge from Outfall 001 at the Facility. These effluent limitations include, but are not limited to, TRC.

3.10. Part II. B of the 2005 Permit requires Respondent to summarize monitoring results each month in a DMR.

3.11. Part III. B of the 2020 Permit requires Respondent to submit monitoring data and other reports electronically using NetDMR.

3.12. Each failure to comply with the effluent limitations and monitoring requirements specified in the 2005 Permit and 2020 Permit, issued pursuant to 402 of the CWA, is a violation of the terms and conditions of the 2005 Permit and 2020 Permit and is a violation of Section CWA Section 301(a), 33 U.S.C. § 1311(a), CWA § 402, 33 U.S.C. § 1342.

3.13. EPA’s inspection of the Facility, together with review of Respondent’s DMRs from February 2016 to July 2020 indicate that the Facility had 862 effluent limit violations, as described below.

Effluent Limit and Monitoring Violations

3.14. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the average monthly loading limit for BOD₅ in the effluent exceeds 30 lb/day. Respondent violated this permit condition three times between February 2016 and May 2020, constituting 90 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
February 2017	BOD ₅	30	48	lb/d
May 2017	BOD ₅	30	30.4	lb/d
May 2019	BOD ₅	30	49	lb/d

3.15. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the average monthly concentration limit for BOD₅ exceeds 30 mg/L. Respondent violated this permit condition in February 2017, constituting 28 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
February 2017	BOD ₅	30	65	mg/L

3.16. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the average weekly loading limit of BOD₅ in the effluent exceeds 45 lb/d. From February 2017 to May 2019, Respondent violated this permit condition two times, constituting 14 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
February 2017	BOD ₅	45	48	lb/d
May 2019	BOD ₅	45	49	lb/d

3.17. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the average weekly concentration limit of BOD₅ in the effluent exceeds 45 mg/L. Respondent violated this permit condition in February 2017, constituting seven violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
February 2017	BOD ₅	45	65	mg/L

3.18. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the maximum daily loading limit of TRC in the effluent exceeds 0.018 lb/d. Respondent violated this permit condition five times between May 2017 and May 2019, constituting five violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
May 2017	TRC	0.018	0.12	lb/d
March 2018	TRC	0.018	0.12	lb/d
April 2018	TRC	0.018	0.17	lb/d
April 2019	TRC	0.018	0.22	lb/d
May 2019	TRC	0.018	0.28	lb/d

3.19. Part I.B.1. of the 2020 Permit prohibits the Facility from discharges in which the daily maximum loading limit of TRC in the effluent exceeds 0.018 lb/d. Respondent violated this permit condition in June 2020, constituting one violation as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
June 2020	TRC	0.018	0.1	lb/d

3.20. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the daily maximum concentration limit for TRC in the effluent exceeds 0.018 mg/L. Respondent violated this permit condition twice between February 2017 and March 2017, constituting two violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
February 2017	TRC	0.018	0.19	mg/L
March 2017	TRC	0.018	0.19	mg/L

3.21. Part I.B.1 of the 2020 Permit prohibits the Facility from discharges in which the daily maximum concentration limit for TRC in the effluent exceeds 0.018 mg/L. Respondent violated this permit condition twice between June 2020 and July 2020, constituting two violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
June 2020	TRC	0.018	0.09	mg/L
July 2020	TRC	0.018	0.09	mg/L

3.22. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the monthly average loading limit for TRC in the effluent exceeds 0.007 lb/d. Respondent violated this permit condition in April 2019, constituting 30 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
April 2019	TRC	0.007	0.3	lb/d

3.23. Part I.B.1 of the 2020 Permit prohibits the Facility from discharges in which the monthly average concentration limit for TRC in the effluent 0.007 mg/L. Respondent violated this permit condition twice in from June 2020 to July 2020, constituting 61 violations as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
June 2020	TRC	0.007	0.08	mg/L
July 2020	TRC	0.007	0.07	mg/L

3.24. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the monthly average concentration limit for TSS in the effluent exceeds 45 mg/L. Respondent violated this condition twice between April 2019 and December 2019, constituting 61 violations as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
April 2019	TSS	45	54	mg/L
December 2019	TSS	45	123	mg/L

3.25. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the monthly average loading limit for TSS in the effluent exceeds 45 lb/d. Respondent violated this permit condition in April 2019, constituting 30 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
April 2019	TSS	45	72.5	lb/d

3.26. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the weekly average concentration of TSS in the effluent exceeds 65 mg/L. Respondent violated this condition once in December 2019, constituting seven violations as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
December 2019	TSS	65	123	mg/L

3.27. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the weekly average loading limit of TSS in the effluent exceeds 65 lb/d. Respondent violated this permit condition once in April 2019, constituting seven violations as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
April 2019	TSS	65	72.5	lb/d

3.28. Part I.A.1 of the 2005 Permit prohibits the Facility from discharges in which the instantaneous maximum of E.coli in the effluent exceeds 406/100 ml. Respondent violated this permit condition once in February 2017, constituting one violation as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
February 2017	E.coli	406/100	2419/100	ml

3.29. Part I.A.4 of the 2005 Permit prohibits the Facility from discharges in which the minimum average monthly BOD₅ removal in the effluent is lower than 85%. Respondent violated this permit condition 14 times, constituting 420 violations as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
February 2016	BOD ₅	85	77.6	%
April 2016	BOD ₅	85	82.9	%
February 2017	BOD ₅	85	35	%
March 2017	BOD ₅	85	.89	%
April 2017	BOD ₅	85	78	%
May 2017	BOD ₅	85	24	%
July 2017	BOD ₅	85	70	%
September 2017	BOD ₅	85	-.44	%
October 2017	BOD ₅	85	80	%
January 2018	BOD ₅	85	76	%
February 2018	BOD ₅	85	59	%
May 2018	BOD ₅	85	84	%
April 2019	BOD ₅	85	77	%
February 2020	BOD ₅	85	80	%

3.30. Part I.A.2 of the 2005 Permit prohibits the Facility from discharges in which the instantaneous maximum pH in the effluent exceeds 9.0 standard units (SU). Respondent violated this permit condition twice between April 2017 and June 2018, constituting two violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
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April 2017	pH	9	9.61	SU
June 2018	pH	9	9.08	SU

3.31. Part I.A.2 of the 2005 Permit prohibits the Facility from discharges in which the instantaneous minimum pH in the effluent is lower than 6.5 SU. Respondent violated this permit condition twice between June 2017 and July 2017, constituting two violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
June 2017	pH	6.5	0.02	SU
July 2017	pH	6.5	0.02	SU

3.32. Part I. A.4 of the 2005 Permit prohibits the Facility from discharges in which the minimum average monthly TSS removal in the effluent is lower than 65%. Respondent violated this permit condition three times between March 2017 and December 2019, constituting 92 violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
March 2017	TSS	65	.98	%
September 2017	TSS	65	.98	%
December 2019	TSS	65	44	%

IV. TERMS OF SETTLEMENT

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

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

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the 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 as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$15,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be 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, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer 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
R10_RHC@epa.gov

Maria Lopez
U.S. Environmental Protection Agency
Region 10, Idaho Operations Office
950 W. Bannock Street, Suite 900
Mail Code: IOO
Boise, ID 83702
lopez.maria@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 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 Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent

and EPA Region 10.

DATED:

7/12/2021

FOR RESPONDENT:



The Honorable ROGER RIGGERS
Mayor
City of Craigmont

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

 Digitally signed by EDWARD
KOWALSKI
Date: 2021.09.08 21:36:40 -07'00'

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF CRAIGMONT

Craigmont, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0062

FINAL ORDER

Proceedings Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

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 _____ day of _____, 2021.

RICHARD
MEDNICK

Digitally signed by
RICHARD MEDNICK
Date: 2021.09.09
13:18:19 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: the City of Craigmont DOCKET NO.: CWA-10-2021-0062** 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 emailed to:

Danielle Granatt
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
206-553-2108
granatt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was emailed to:

The Honorable Roger Riggers, Mayor
City of Craigmont
109 E. Main Street
Craigmont, ID 83523
CityofCraigmont@gmail.com

Adam Green
Attorney at Law
401 W. North Street
P.O. Box 246
Grangeville, ID 83530
adamhowardgreen@yahoo.com

DATED this _____ day of _____, 2021.

**TERESA
YOUNG**

Digitally signed by
TERESA YOUNG
Date: 2021.09.09
14:08:36 -07'00'

Teresa Young
Regional Hearing Clerk
EPA Region 10