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BEFORE THE HEARINGS CLERK
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Worley, Idaho,

Respondent.

DOCKET NO. CWA-10-2018-0320

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 Worley ("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 22.18(b), issuance 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 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 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 the 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 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 CWA, 33 U.S.C. § 1342.

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). 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 the City of Worley Wastewater Treatment Facility (“Facility”), located in Worley, Idaho, at South 29401 B Street, Worley, Idaho 83876.

3.6 At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID0022713 (effective date May 1, 2015) (“2015 Permit”).

3.7 The Facility discharges pollutants from Outfall 001 to the North Fork Rock Creek (at latitude 47.04078, longitude -116.9208), which flows to Hangman Creek, which flows to the Spokane River. Outfall 001 is a “point source” as defined in 40 C.F.R. § 122.2.

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

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

3.10 Section I.B. of the Permit establishes effluent limitations for the discharge from Outfall 001. These effluent limits include, but are not limited to, BOD₅, total suspended solids (“TSS”), *Escherichia coli* (“*E. coli*”), Total Residual Chlorine (“TRC”), total phosphorus, pH, total ammonia as N, and temperature.

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

3.12 The Permit authorizes the Facility to discharge from November 1 through June 30 annually. However, discharge typically occurs from January 1 through May 31 each year.

3.13 Respondent's DMRs from April 2014 through March 2018 reflect that the Facility had 929 effluent limit violations.

3.14 When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit each day of the month in which the exceedance occurred. 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. When a permittee exceeds an instantaneous effluent limit, the violation counts as one violation.

3.15 The violations addressed below consist of 29 monthly average effluent limit violations, seven weekly average effluent limit violations, and four daily effluent limit violations.

3.16 The specific pollutants for which the effluent limit violations were assessed are BOD, TSS, ammonia, and *E. coli*.

3.17 From April 2014 through March 2018, the following permit violations occurred:

3.17.1 Part I.B.1 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% average monthly removal requirement. From April 2014 through March 2018, Respondent did not meet the 85% average monthly removal of TSS 8 times, constituting 243 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
April 2014	TSS	85	70	%	30
May 2014	TSS	85	80	%	31
March 2015	TSS	85	27	%	31
February 2016	TSS	85	69	%	29
April 2016	TSS	85	52	%	30
March 2017	TSS	85	77	%	31
April 2017	TSS	85	73	%	30
March 2018	TSS	85	80	%	31

3.17.2 Part I.B.1 of the permit specifies that the average weekly concentration of TSS in the effluent shall not exceed 45 mg/L. From April 2014 through March 2018, Respondent exceeded the average weekly concentration limit for TSS 1 time, constituting 7 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	TSS	45	47	mg/L	7

3.17.3 Part I.B.1 of the permit specifies that the average weekly loading of TSS in the effluent shall not exceed 21.4 lb/d. From April 2014 through March 2018, Respondent exceeded the average weekly loading limit for TSS 6 times, constituting 42 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	TSS	21.4	116.42	lb/d	7
April 2016	TSS	21.4	99.98	lb/d	7
May 2016	TSS	21.4	28.07	lb/d	7
March 2017	TSS	21.40	48.19	lb/d	7
April 2017	TSS	21.40	39.77	lb/d	7
March 2018	TSS	21.40	37.43	lb/d	7

3.17.4 Part I.B.1 of the permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 30 mg/L. From April 2014 through March 2018, Respondent exceeded the average monthly concentration limit for TSS 2 times, constituting 59 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	TSS	30	47	mg/L	29
April 2016	TSS	30	40.5	mg/L	30

3.17.5 Part I.B.1 of the permit specifies that the average monthly loading of TSS in the effluent shall not exceed 14.3 lb/d. From April 2014 through March 2018, Respondent exceeded the average monthly loading limit for TSS 6 times, constituting 182 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	TSS	14.3	116.42	lb/d	30
April 2016	TSS	14.3	99.98	lb/d	30
May 2016	TSS	14.3	28.07	lb/d	30
March 2017	TSS	14.30	48.19	lb/d	31

April 2017	TSS	14.30	39.77	lb/d	30
March 2018	TSS	14.30	37.43	lb/d	31

3.17.6 Part I.B.1 of the permit specifies that the average monthly loading of BOD in the effluent shall not exceed 14.3 lb/d. From April 2014 through March 2018, Respondent exceeded the average monthly loading limit for total BOD 1 time, constituting 29 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	BOD	14.3	42.11	lb/d	29

3.17.7 Part I.B.1 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. From April 2014 through March 2018, Respondent did not meet the 85% average monthly removal of BOD 6 times, constituting 180 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
April 2014	BOD	85	77	%	30
May 2014	BOD	85	78	%	31
March 2015	BOD	85	44	%	31
February 2016	BOD	85	65	%	29
March 2016	BOD	85	70	%	31

3.17.8 Part I.B.1 of the permit specifies that the daily maximum effluent loading of ammonia shall not exceed 5.1 lb/d. From April 2014 through March 2018, Respondent exceeded the daily maximum effluent loading limit for total ammonia 4 times, constituting 4 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	Ammonia	5.1	19.18	lb/d	1
April 2016	Ammonia	5.1	15.7	lb/d	1
May 2016	Ammonia	5.1	9.24	lb/d	1
March 2018	Ammonia	5.10	13.73	lb/d	1

3.17.9 Part I.B.1 of the permit specifies that the average monthly concentration of ammonia in the effluent shall not exceed 4.01 mg/L. From April 2014 through March 2018, Respondent exceeded the average monthly concentration limit for ammonia 3 times, constituting 90 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	Ammonia	4.10	7.18	mg/L	29
April 2016	Ammonia	4.10	6.52	mg/L	30
May 2016	Ammonia	4.10	8.30	mg/L	31

3.17.10 Part I.B.1 of the permit specifies that the average monthly loading of ammonia in the effluent shall not exceed 1.9 lb/d. From April 2014 through March 2018, Respondent exceeded the average monthly loading limit for total ammonia 4 times, constituting 121 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	Violations
February 2016	Ammonia	1.9	17.78	lb/d	29
April 2016	Ammonia	1.9	15.43	lb/d	30
May 2016	Ammonia	1.9	8.79	lb/d	31
March 2017	Ammonia	1.9	3.43	lb/d	31

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. Penalty: Pursuant to 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 the alleged violations is \$4,100.
- 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. 40 C.F.R. § 22.31(c).
- 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 Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Young.Teresa@epa.gov

Raymond Andrews, Compliance Officer
U.S. Environmental Protection Agency
Region 10, M/S OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Andrews.Raymond@epa.gov

4.7. Except as described in Subparagraph 4.8.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.8. 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.

4.8.1. Interest: Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the

assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.8.2. 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 4.2, 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.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

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

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth therein.

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

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

7-11-18

FOR RESPONDENT:

Charlene Waddell

THE HONORABLE CHARLENE WADDELL,
Mayor of the City of Worley, Idaho

DATED:

8/20/2018

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Worley, Idaho,

Respondent.

DOCKET NO. CWA-10-2018-0320

FINAL ORDER

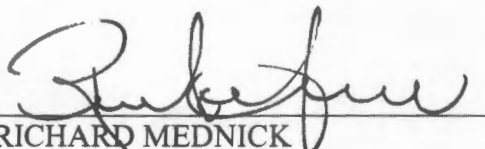
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. 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.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the 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.

1.4. This Final Order shall become effective upon filing.

SO ORDERED this 21st day of August, 2018.



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 **In the Matter of: City of Worley, Idaho, DOCKET NO.: CWA-10-2018-0320**, was filed with the Regional Hearing Clerk on the date below.

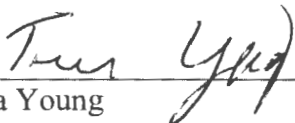
The undersigned certifies that a true and correct copy of the document was delivered to:

William M. McLaren
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
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 on the date below to:

Worley City Hall
Attn: Mayor Charlene Waddell
9936 W E Street
Worley, ID 83876

DATED this 22 day of August 2018.



Teresa Young
Regional Hearing Clerk
EPA Region 10

THE BOARD OF DIRECTORS

Resolved, that the Board of Directors do hereby authorize the President and the Secretary to execute and deliver to the Secretary of the State of New York, a certificate of incorporation for the purpose of organizing the Board of Directors of the [Company Name] in accordance with the provisions of the laws of the State of New York.

Witness my hand and the seal of the Board of Directors this [Day] of [Month], 19[Year].

Attest:
Secretary

In testimony whereof, I have hereunto set my hand and the seal of the Board of Directors this [Day] of [Month], 19[Year].

President

[Faint signature and text, possibly a signature of the Secretary or another official]