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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2011-0087
	)	
CITY OF BURLEY, IDAHO,	)	
	)	<b>CONSENT AGREEMENT AND</b>
	)	<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), 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, Idaho (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 has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), 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. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. CWA Section 502(12), 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.” 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. “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. 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).

3.3. Respondent owns and operates an industrial wastewater treatment facility (Facility) located at the Burley-Heyburn Industrial Park in Burley, Idaho.

3.4. During the times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-000066-3 (Permit). The Permit became effective on June 1, 2009 and expires on May 31, 2014.

3.5. The Facility, which was under Respondent's control at all times relevant to this action, discharges wastewater containing pollutants from Outfall 003 into the Snake River.

3.6. Outfall 003 is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.7. The Snake River is an interstate water that is susceptible to use in interstate and foreign commerce. As such, the Snake River is a "navigable water" as defined in CWA Section 502(7), 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. § 122.2.

3.8. 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(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.9. Section I.B of the Permit establishes effluent limitations for the discharge from Outfall 003. These effluent limits include, but are not limited to, biochemical oxygen demand (BOD) and total suspended solids (TSS).

3.10. Section 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 June 2009 to September 2010 shows that the Facility had 1,298 effluent limit violations of the Permit. When a permittee exceeds an average monthly 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 an average weekly effluent limit, the permit is deemed to be in violation of the effluent limit for each day of the week in which the exceedance occurred.

3.12. Section I.B of the Permit contains an average monthly concentration effluent limit for BOD in discharges from the Facility of 30 mg/L. This effluent limit is applicable when effluent flow from the Facility is greater than or equal to 0.44 million gallons per day (mgd). Between June 2009 and September 2010, Respondent violated the average monthly concentration effluent limit for BOD a total of 5 times, constituting 151 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2010	28
March 2010	31
April 2010	30
May 2010	31
July 2010	31

3.13. Section I.B of the Permit contains an average monthly mass effluent limit for BOD in discharges from the Facility of 110 lbs/day. This effluent limit is applicable when effluent flow from the Facility is less than 0.44 mgd. Between June 2009 and September 2010, Respondent violated the average monthly mass effluent limit for BOD a total of 9 times, constituting 275 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2009	30
July 2009	31
August 2009	31
September 2009	30

Month of Violation	Number of Violations
October 2009	31
November 2009	30
December 2009	31
June 2010	30
August 2010	31

3.14. Section I.B of the Permit contains an average monthly mass effluent limit for BOD in discharges from the Facility of 600 lbs/day. This effluent limit is applicable when effluent flow from the Facility is greater than or equal to 0.44 mgd. Between June 2009 and September 2010, Respondent violated the average monthly mass effluent limit for BOD a total of 3 times, constituting 92 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2010	31
April 2010	30
May 2010	31

3.15. Section I.B of the Permit contains an average monthly percent removal effluent limit for BOD in discharges from the Facility of 85%. This effluent limit is applicable when effluent flow from the Facility is greater than or equal to 0.44 mgd. Between June 2009 and September 2010, Respondent violated the average monthly percent removal effluent limit for BOD a total of 3 times, constituting 92 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2010	31
April 2010	30
May 2010	31

3.16. Section I.B of the Permit contains an average weekly concentration effluent limit for BOD in discharges from the Facility of 45 mg/L. This effluent limit is applicable when

effluent flow from the Facility is greater than or equal to 0.44 mgd. Between June 2009 and September 2010, Respondent violated the average weekly concentration effluent limit for BOD a total of 5 times, constituting 35 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2010	7
March 2010	7
April 2010	7
May 2010	7
July 2010	7

3.17. Section I.B of the Permit contains an average weekly mass effluent limit for BOD in discharges from the Facility of 165 lbs/day. This effluent limit is applicable when effluent flow from the Facility is less than 0.44 mgd. Between June 2009 and September 2010, Respondent violated the average weekly mass effluent limit for BOD a total of 10 times, constituting 70 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2009	7
July 2009	7
August 2009	7
September 2009	7
October 2009	7
November 2009	7
December 2009	7
June 2010	7
August 2010	7
September 2010	7

3.18. Section I.B of the Permit contains an average weekly mass effluent limit for BOD in discharges from the Facility of 901 lbs/day. This effluent limit is applicable when effluent

flow from the Facility is greater than or equal to 0.44 mgd. Between June 2009 and September 2010, Respondent violated the average weekly mass effluent limit for BOD a total of 3 times, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
March 2010	7
April 2010	7
May 2010	7

3.19. Section I.B of the Permit contains an average monthly mass effluent limit for TSS in discharges from the Facility of 138 lbs/day. This effluent limit is applicable when flow from the Facility is less than 0.55 mgd. Between June 2009 and September 2010, Respondent violated the average monthly mass effluent limit for TSS a total of 15 times, constituting 457 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2009	30
July 2009	31
August 2009	31
September 2009	30
October 2009	31
November 2009	30
December 2009	31
January 2010	31
February 2010	28
March 2010	31
April 2010	30
May 2010	31
June 2010	30
July 2010	31
August 2010	31

3.20. Section I.B of the Permit contains an average weekly mass effluent limit for TSS in discharges from the Facility of 207 lbs/day. This effluent limit is applicable when effluent flow from the Facility is less than 0.55 mgd. Between June 2009 and September 2010, Respondent violated the average weekly mass effluent limit for TSS a total of 15 times, constituting 105 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2009	7
July 2009	7
August 2009	7
September 2009	7
October 2009	7
November 2009	7
December 2009	7
January 2010	7
February 2010	7
March 2010	7
April 2010	7
May 2010	7
June 2010	7
July 2010	7
August 2010	7

3.21. Under CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person ... has violated any permit condition or limitation ... in a permit issued” pursuant to CWA Section 402, 33 U.S.C. § 1342. Consequently under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act, as amended, 24 U.S.C. § 2461 note, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each violation, up to a maximum of \$177,500.



#### **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 \$5,000.

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:

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 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:

FOR CITY OF BURLEY, IDAHO:

6-7-11

Robert T. Greenman

Signature

Print Name: Robert T. Greenman

Title: Mayor

DATED:

6/21/11

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



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.

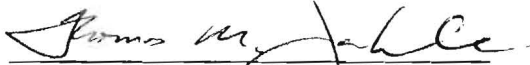
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable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

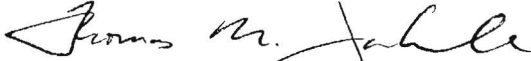
SO ORDERED this 18<sup>th</sup> day of August, 2011.



THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 10

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 15<sup>th</sup> day of September, 2011.



THOMAS M. JAHNKE  
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 **In the Matter of: City of Burley, DOCKET NO.: CWA-10-2011-0087** was filed with the Regional Hearing Clerk on September 15, 2011.


On September 15, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Weber, Esquire  
US 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 on September 15, 2011 to:

Mark Mitton  
City Manager  
City of Burley  
1401 Overland Avenue  
P.O. Box 1090  
Burley, ID 83318

DATED this 15<sup>th</sup> day of September 2011.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10