

Hagerman (“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

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. CWA Section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.”

3.2. 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).

3.3. Respondent owns and operates a wastewater treatment facility (“Facility”) in Hagerman, Idaho that treats domestic sewage from local residents and commercial establishments through a separate sanitary sewer system.

3.4. Respondent discharges effluent containing pollutants from the Facility to the Snake River from September through June of each year.

3.5. Discharge to the Snake River occurs through an outfall pipe (“Outfall 001”), 150 feet from shore and 20 feet below the water surface. Outfall 001 is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.6. The Snake River is an interstate water which is susceptible to use in interstate and foreign commerce. Accordingly, 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.

3.7. 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).

3.8. During the times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-

002594-1 (“Permit”). The Permit became effective on November 1, 2007 and expired on October 31, 2012. The Permit was administratively extended pursuant to 40 C.F.R. § 122.6.

3.9. 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.

3.10. 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 July 1, 2009 to August 2014 show that the Facility had 1,616 effluent limit violations of the Permit. 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 is counted as one violation.

3.12. Section I.B of the Permit contains an average monthly concentration effluent limit for BOD₅ in discharges from the Facility of 30 mg/L. Between July 1, 2009 and August 2014, Respondent violated the average monthly concentration effluent limits for BOD₅ a total of three times, constituting 91 violations. The violations are as follows:

Month of Violation	Number of Violations
April 2010	30
May 2012	31
April 2013	30

3.13. Section I.B of the Permit contains an average weekly concentration effluent limit for BOD₅ in discharges from the Facility of 45 mg/L. Between July 1, 2009 and August 2014, Respondent violated the average weekly concentration limit for BOD₅ one time, constituting seven violations. The violations are as follows:

Month of Violation	Number of Violations
May 2012	7

3.14. Section I.B of the Permit contains an average monthly removal requirement for BOD₅ in discharges from the Facility that requires that the monthly average effluent concentration does not exceed 15 percent of the monthly average influent concentration. Between July 1, 2009 and August 2014, Respondent violated the monthly average removal requirement for BOD₅ a total of five times, constituting 152 violations. The violations are as follows:

Month of Violation	Number of Violations
April 2010	30
January 2011	31
April 2012	30
May 2012	31
April 2013	30

3.15. Section I.B of the Permit contains an average monthly concentration effluent limit for TSS in discharges from the Facility of 30 mg/L. Between July 2009 and August 2014,

Respondent violated the average monthly concentration effluent limit for TSS a total of five times, constituting 151 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2011	31
February 2012	29
April 2012	30
May 2012	31
June 2012	30

3.16. Section I.B of the Permit contains an average weekly concentration effluent limit for TSS in discharges from the Facility of 45 mg/L. Between July 1, 2009 and August 2014, Respondent violated the average weekly concentration effluent limit for TSS a total of five times, constituting 35 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2010	7
February 2012	7
April 2012	7
June 2012	7
April 2014	7

3.17. Section I.B of the Permit contains an average monthly loading effluent limit for TSS in discharges from the Facility of 7.7 lbs/day. Between July 1, 2009 and August 2014, Respondent violated the average monthly loading effluent limit for TSS a total of 14 times, constituting 422 violations. The violations are as follows:

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

3.18. Section I.B of the Permit contains an average weekly loading effluent limit for TSS in discharges from the Facility of 15.5 lbs/day. Between July 1, 2009 and August 2014, Respondent violated the average weekly loading effluent limit for TSS a total of ten times, constituting 70 violations. The violations are as follows:

Month of Violation	Number of Violations
November 2011	7
December 2011	7
January 2012	7
February 2012	7
April 2012	7
January 2013	7
February 2013	7

Month of Violation	Number of Violations
December 2013	7
February 2014	7
March 2014	7

3.19. Section I.B of the Permit contains an average monthly removal requirement for TSS in discharges from the Facility that requires that the monthly average effluent concentration does not exceed 15 percent of the monthly average influent concentration. Between July 1, 2009 and August 2014, Respondent violated the average monthly removal requirement for TSS a total of 16 times, constituting 482 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2010	31
January 2011	31
February 2011	28
April 2011	30
November 2011	30
December 2011	31
January 2012	31
February 2012	29
April 2012	30
May 2012	31
June 2012	30
March 2013	31
April 2013	30
February 2014	28
March 2014	31
April 2014	30

3.20. Section I.B of the Permit contains an average monthly effluent limit for *E. coli* in discharges from the Facility of 126 colonies/100 ml. Between July 1, 2009 and August 2014, Respondent violated the average monthly effluent limit for *E. coli* a total of six times, constituting 183 violations. The violations are as follows:

Month of Violation	Number of Violations
January 2010	31
April 2010	30
April 2011	30
January 2012	31
March 2013	31
April 2013	30

3.22. Section I.B of the Permit contains a maximum daily effluent limit for TRC in discharges from the Facility of 1.0 lbs/day. Between July 1, 2009 and August 2014, Respondent violated the maximum daily effluent limit for TRC one time, constituting one violation. The violation is as follows:

Month of Violation	Number of Violations
April 2014	1

3.22. Section I.B of the Permit contains an average weekly effluent limit for TP in discharges from the Facility of 11.4 lbs/day. Between July 1, 2009 and August 2014, Respondent violated the maximum daily effluent limit for TRC one time, constituting seven violations. The violations are as follows:

Month of Violation	Number of Violations
February 2014	7

3.21. Section I.B of the Permit contains an instantaneous minimum effluent limit for pH in discharges from the Facility of 6.5 su. Between July 1, 2009 and August 2014, Respondents violated the instantaneous minimum effluent limit for pH a total of two times, constituting two violations. The violations are as follows:

Month of Violation	Number of Violations
January 2010	1
February 2010	1

3.22. Section I.B of the Permit contains an instantaneous maximum effluent limit for pH in discharges from the Facility of 9.0 su. Between July 2009 and August 2014, Respondent violated the instantaneous minimum effluent limit for pH a total of 13 times, constituting 13 violations.

Month of Violation	Number of Violations
February 2012	1
March 2012	1
April 2012	1
May 2012	1
June 2012	1
September 2012	1
January 2013	1
March 2013	1
April 2013	1
September 2013	1

Month of Violation	Number of Violations
December 2013	1
March 2014	1
April 2014	1

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 40 C.F.R. Part 19, 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 that occurred after January 12, 2009, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations of this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in 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 \$4,000.
- 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-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Maria Lopez
U.S. Environmental Protection Agency
Idaho Operations Office
950 W Bannock Street
Boise, ID 83702

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

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO 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:

11/17/2014

FOR RESPONDENT:

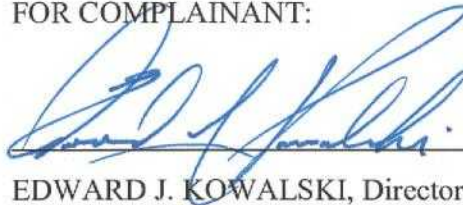


NOEL WEIR, Mayor
City of Hagerman

DATED:

11/18/2014

FOR COMPLAINANT:



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.

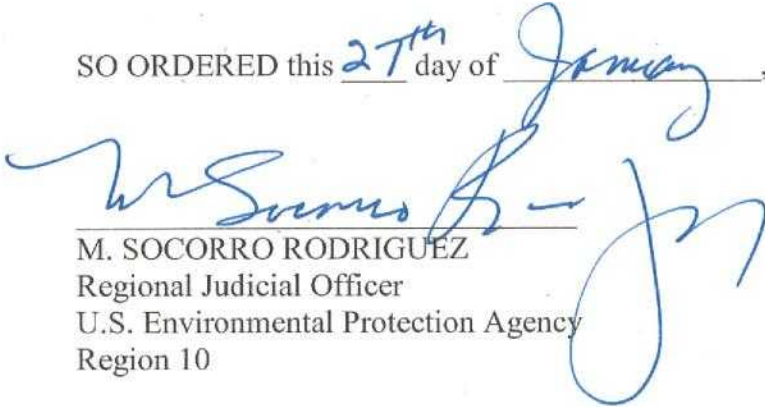
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 27th day of January, 2015



M. SOCORRO RODRIGUEZ
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 the Matter of: City of Hagerman, Wastewater Treatment Plant, Docket No.: CWA-10-2015-0014**, 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 delivered to:

Stephanie Ebright
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 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:

Noel Weir, Mayor
City of Hagerman
P.O. Box 158
Hagerman, Idaho 83332

DATED this 27th day of January, 2014,


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10