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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:

DOCKET NO. CWA-10-2018-0004

CITY OF NEZPERCE WASTEWATER  
TREATMENT PLANT

**CONSENT AGREEMENT**

Nezperce, Idaho

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

Respondent.

**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) 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 person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation implementing any of such sections 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 the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$20,965 per day for each day during which the violation continues, up to a

maximum penalty of \$262,066. See also 82 Fed. Reg. 3633 (January 12, 2017) (2017 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Sections 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 Nezperce (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), 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 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 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 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. 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.

3.4. 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.

#### **General Allegations**

3.5. 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).

3.6. 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.

3.7. 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.

3.8. 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.

3.9. 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.

3.10. 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).

3.11. 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.

### **Violations**

3.12. As described below, from March of 2012 through February of 2017, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of the Permit.

3.13. The Permit establishes effluent limits for the discharges from the point source at the Facility. These effluent limits include, but are not limited to, *E. coli*, pH, total suspended solids (“TSS”), and 5-day biological oxygen demand (“BOD<sub>5</sub>”).

3.14. Respondent’s discharge monitoring reports (“DMRs”) from March of 2012 through February of 2017 show that the Facility had 2,520 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 permittee is deemed to be in violation of the effluent limit for each day of the week in which the exceedance occurred.

3.15. Part I.A.1 of the Permit specifies that the instantaneous maximum limit of *E. Coli* in the effluent shall not exceed 406/100ml. From March 2012 through February 2017, Respondent exceeded the instantaneous maximum limit for *E. coli* 5 times, constituting 5 violations. The violations are:

<b>Month of Violation</b>	<b>Value Reported in DMR</b>	<b>Units</b>	<b>Number of Violations</b>
March 2012	1203	#/100mL	1
November 2012	980	#/100mL	1
December 2013	1300	#/100mL	1
February 2014	2419	#/100mL	1
November 2015	1046	#/100mL	1

3.16. Part I.A.2 of the Permit specifies that the maximum limit of pH in the effluent shall not be greater than 9.0 standard units (“SU”). From March 2012 through February 2017,

Respondent exceeded the maximum limit for pH 9 times, constituting 9 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
November 2012	9.18	SU	1
April 2013	9.42	SU	1
November 2013	9.40	SU	1
December 2013	9.37	SU	1
January 2014	9.05	SU	1
April 2014	9.76	SU	1
March 2015	9.21	SU	1
March 2016	9.02	SU	1
April 2016	9.31	SU	1

3.17. Part I.A.4 of the Permit specifies that the average monthly effluent concentration of TSS shall not exceed 15 percent of the monthly average influent concentration. This represents a minimum 85 percent removal requirement. From March 2012 through February 2017, Respondent did not meet the 85 percent average monthly removal of TSS 19 times, constituting 516 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2012	83.3	%	31
November 2012	75.0	%	30
December 2012	72.5	%	31

Month of Violation	Value Reported in DMR	Units	Number of Violations
January 2013	67.7	%	31
February 2013	78.7	%	28
May 2013	39.0	%	31
December 2013	63.8	%	31
January 2014	75.0	%	31
February 2014	71.4	%	28
March 2014	73.3	%	31
December 2014	65.6	%	31
January 2015	81.9	%	31
February 2016	78.6	%	29
March 2016	81.6	%	31
April 2016	82.9	%	30
May 2016	75.3	%	31
November 2016	82.5	%	30

3.18. Part I.A.1 of the Permit specifies that the average weekly loading of TSS in the effluent shall not exceed 34 lbs/day. From March 2012 through February 2017, Respondent exceeded the average weekly loading limit for TSS 13 times, constituting 91 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
June 2012	34.7	lbs/d	7
November 2013	64.0	lbs/d	7

<b>Month of Violation</b>	<b>Value Reported in DMR</b>	<b>Units</b>	<b>Number of Violations</b>
December 2013	44.8	lbs/d	7
January 2014	65.5	lbs/d	7
February 2014	57.5	lbs/d	7
March 2014	116	lbs/d	7
April 2014	39.2	lbs/d	7
November 2014	59.9	lbs/d	7
December 2014	49.6	lbs/d	7
February 2016	35.8	lbs/d	7
March 2016	89.5	lbs/d	7
April 2016	45.9	lbs/d	7
May 2016	72.6	lbs/d	7

3.19. Part I.A.1 of the Permit specifies that the average weekly concentration of TSS in the effluent shall not exceed 45 mg/L. From March 2012 through February 2017, Respondent exceeded the average weekly concentration limit for TSS 4 times, constituting 28 violations.

The violations are:

<b>Month of Violation</b>	<b>Value Reported in DMR</b>	<b>Units</b>	<b>Number of Violations</b>
November 2013	48	mg/L	7
January 2014	52	mg/L	7
March 2016	50	mg/L	7
May 2016	60	mg/L	7



3.20. Part I.A.1 of the Permit specifies that the average monthly loading of TSS in the effluent shall not exceed 23 lbs/d. From March 2012 through February 2017, Respondent exceeded the average monthly concentration limit for TSS 16 times, constituting 485 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2012	27.7	lbs/d	31
June 2012	23.7	lbs/d	30
November 2012	33.7	lbs/d	30
January 2013	25.7	lbs/d	31
November 2013	38.0	lbs/d	30
December 2013	28.1	lbs/d	31
January 2014	39.0	lbs/d	31
February 2014	34.5	lbs/d	28
March 2014	53.9	lbs/d	31
April 2014	29.4	lbs/d	30
November 2014	37.5	lbs/d	30
December 2014	38.1	lbs/d	31
February 2016	24.5	lbs/d	29
March 2016	54.1	lbs/d	31
April 2016	29.6	lbs/d	30
May 2016	46.2	lbs/d	31

3.21. Part I.A.1 of the permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 30 mg/L. From March 2012 through February 2017, Respondent exceeded the average monthly concentration limit for TSS 11 times, constituting 335 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
November 2012	31.3	mg/L	30
May 2013	40.0	mg/L	31
November 2013	39.0	mg/L	30
December 2013	30.6	mg/L	31
January 2014	41.3	mg/L	31
April 2014	31.6	mg/L	30
November 2014	32.0	mg/L	30
December 2014	33.0	mg/L	31
February 2016	30.3	mg/L	29
March 2016	40.8	mg/L	31
May 2016	45.6	mg/L	31

3.22. Part I.A.4 of the permit specifies that the monthly average effluent concentration of BOD<sub>5</sub> shall not exceed 15 percent of the monthly average influent concentration. This represents a minimum 85 percent removal requirement. From March 2012 through February 2017, Respondent did not meet the 85 percent average monthly removal of BOD<sub>5</sub> 18 times, constituting 580 violations. The violations are:

<b>Month of Violation</b>	<b>Value Reported in DMR</b>	<b>Units</b>	<b>Number of Violations</b>
December 2011	84.4	%	31
January 2012	36.5	%	31
March 2012	23.2	%	31
April 2012	82.1	%	30
November 2012	69	%	30
December 2012	68.2	%	31
January 2013	77.5	%	31
February 2013	72.3	%	28
March 2013	81.4	%	31
May 2013	67	%	31
December 2013	78.9	%	31
January 2014	75	%	31
March 2014	70.6	%	31
April 2014	73.6	%	30
December 2015	81.1	%	31
February 2016	67.2	%	29
March 2016	77.2	%	31
April 2016	79.2	%	30
May 2016	74.8	%	31

3.23. Part I.A.1 of the Permit specifies that the average weekly loading of BOD<sub>5</sub> in the effluent shall not exceed 34 lbs/d. From March 2012 through February 2017, Respondent

exceeded the average weekly loading limit for BOD<sub>5</sub> 11 times, constituting 77 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2012	43.3	lbs/d	7
April 2012	60.7	lbs/d	7
June 2012	34.4	lbs/d	7
November 2012	62.5	lbs/d	7
November 2013	48	lbs/d	7
December 2013	41.6	lbs/d	7
January 2014	49.2	lbs/d	7
February 2014	56.6	lbs/d	7
March 2014	139.4	lbs/d	7
January 2015	36.9	lbs/d	7
March 2016	55.6	lbs/d	7

3.24. I.A.1 of the Permit specifies that the average monthly concentration of BOD<sub>5</sub> in the effluent shall not exceed 30 mg/L. From March 2012 through February 2017, Respondent exceeded the average monthly concentration limit for BOD<sub>5</sub> 3 times, constituting 91 violations.

The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
November 2012	32.8	mg/L	30
November 2013	31	mg/L	30

January 2014	35	mg/L	31
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3.25. Part I.A.1 of the Permit specifies that the average monthly loading of BOD<sub>5</sub> in the effluent shall not exceed 23 lbs/d. From March 2012 through February 2017, Respondent exceeded the average monthly loading limit for BOD<sub>5</sub> 11 times, constituting 303 violations. The violations are:

Month of Violation	Value Reported in DMR	Units	Number of Violations
March 2012	43.3	lbs/d	31
April 2012	38.5	lbs/d	30
November 2012	34.3	lbs/d	30
November 2013	30.0	lbs/d	30
December 2013	23.9	lbs/d	31
January 2014	34.2	lbs/d	31
February 2014	33.4	lbs/d	28
March 2014	58.5	lbs/d	31
April 2014	24.7	lbs/d	30
March 2016	31.4	lbs/d	31

3.26. During the violations period set forth above, Respondent made good-faith efforts to come into compliance with the Permit.

#### **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 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 that an appropriate penalty to settle this action is \$6,500.

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

Raymond Andrews  
U.S. Environmental Protection Agency

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TREATMENT PLANT  
Docket Number: CWA-10-2018-0004  
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**U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, ORC-113  
Seattle, Washington 98101  
(206) 553-1037**

Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[Young.teresa@epa.gov](mailto:Young.teresa@epa.gov)

Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[Andrews.raymond@epa.gov](mailto:Andrews.raymond@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. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal this Consent Agreement and the Final Order.

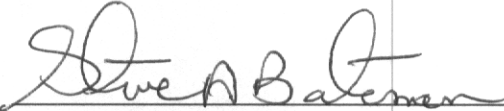
4.12. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

11/6/17


FOR RESPONDENT:

  
\_\_\_\_\_  
STEVE A. BATEMAN, Mayor  
City of Nezperce

DATED:

11/28/2017

FOR COMPLAINANT:

  
\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10



BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF NEZPERCE WASTEWATER  
TREATMENT PLANT

Nezperce, Idaho

Respondent.

DOCKET NO. CWA-10-2018-0004

**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. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any

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U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, ORC-113  
Seattle, Washington 98101  
(206) 553-1037

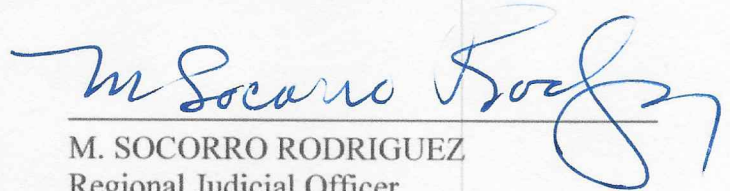
issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

5. Pursuant to CWA Section 309(g)(1), 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.

6. Pursuant to CWA Section 309(g)(4)(A), 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.

7. This Final Order shall become effective upon filing.

SO ORDERED this 30<sup>th</sup> day of November, 2017.



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 Nezperce Wastewater Treatment Plant, Docket No.: CWA-10-2018-0004**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

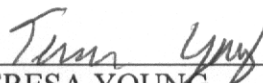
The undersigned certifies that a true and correct copy of the document was delivered to:

Ashley Palomaki  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, 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:

Steve A. Bateman  
Mayor  
City of Nezperce  
P.O. Box 367  
Nezperce, Idaho 83543

DATED this 4 day of December, 2017.

  
\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10