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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2007-0114
)	
CITY OF MOSCOW,)	CONSENT AGREEMENT AND
Moscow, Idaho)	FINAL ORDER
)	
Respondent.)	

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 in turn has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B), 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 hereby issues, and the

1 City of Moscow ("Moscow") hereby agrees to issuance of, the Final Order contained in Part V of
2 this CAFO.

3 **II. PRELIMINARY STATEMENT**

4 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
5 commences this proceeding which will conclude when the Final Order contained in Part V of
6 this CAFO becomes effective.

7 2.2. Part III of this CAFO contains a concise statement of the factual basis for the
8 alleged violations of the CWA, together with specific provisions of the CWA and implementing
9 regulations that Moscow is alleged to have violated.

10 **III. ALLEGATIONS**

11 3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the "discharge of any
12 pollutants by any person" except as authorized by a National Pollutant Discharge Elimination
13 System ("NPDES") permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section
14 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to
15 include "any addition of any pollutant to navigable waters from any point source." "Navigable
16 waters" are defined as "waters of the United States." 33 U.S.C. § 1362(7).

17 3.2. Moscow is a municipality organized under the laws of the State of Idaho and,
18 thus, is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19 3.3. Moscow owns and operates a wastewater treatment facility ("Facility") located in
20 Moscow, Idaho.

21 3.4. During the times relevant to this action, Moscow was authorized to discharge
22 municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-
23 002149-1 ("Permit"). The Permit became effective on April 14, 1999 and expired on April 14,
24
25

1 2004. Since Moscow submitted a timely application for reissuance of the Permit, the Permit has
2 been administratively extended.

3 3.5. The Facility, which was under Moscow's control all times relevant to this action,
4 discharges pollutants from Outfall 001, which is located at latitude 46° 44' 21" and longitude
5 117° 01' 47". Outfall 001 is a "point source" within the meaning of Section 502(14) of the
6 CWA, 33 U.S.C. § 1362(14).

7 3.6. The Facility discharges municipal wastewater containing pollutants into Paradise
8 Creek. Paradise Creek is a "navigable water" within the meaning of Section 502(7) of the CWA,
9 33 U.S.C. § 1362(7), and a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

10 3.7. Part I.A. of the Permit establishes effluent limits for the discharge from Outfall
11 001. These effluent limits include, but are not limited to, total residual chlorine, dissolved
12 oxygen, fecal coliform bacteria, and phosphorus.

13 3.8. Part II.C. of the Permit requires Moscow to summarize monitoring results for the
14 Facility each month in a Discharge Monitoring Report ("DMR").

15 3.9. Moscow's DMRs from March 2002 to June 2006 indicate that the Facility had
16 871 violations of the effluent limits set forth in the Permit. When a permittee exceeds a monthly
17 average effluent limit, the permittee is deemed to be in violation of that effluent limit each of the
18 days of the month in which the violation occurred. When a permittee exceeds a weekly average
19 effluent limit, the exceedance is counted as seven violations. When a permittee exceeds a daily
20 maximum effluent limit, the exceedance is counted as one violation.

21 3.10. Section I.A. of the Permit contains a monthly average mass effluent limit for total
22 residual chlorine in discharges from the Facility of 0.3 lbs/day. Between March 2002 and June
23 2006, Moscow violated the monthly average mass effluent limit for total residual chlorine in
24 February 2003, constituting 29 violations.

1 3.11. Section I.A. of the Permit contains a daily maximum concentration effluent limit
2 for total residual chlorine in discharges from the Facility of 18 µg/L. Between March 2002 and
3 June 2006, Moscow violated the daily maximum concentration effluent limit for total residual
4 chlorine a total of five (5) months, constituting five (5) violations. The violations are as follows:

5

Month of Violation	Number of Violations
May 2002	1
July 2002	1
January 2003	1
February 2003	1
August 2004	1

6
7
8
9

10 3.12. Section I.A. of the Permit contains a daily maximum mass effluent limit for total
11 residual chlorine in discharges from the Facility of 0.5 lbs/day. Between March 2002 and June
12 2006, Moscow violated the daily maximum mass effluent limit for total residual chlorine a total
13 of three (3) months, constituting three (3) violations. The violations are as follows:

14

Month of Violation	Number of Violations
March 2002	1
February 2003	1
August 2004	1

15
16
17

18 3.13. Section I.A. of the Permit contains a daily maximum effluent limit for fecal
19 coliform bacteria in discharges from the Facility of 800 colonies/100 mL. Between March 2002
20 and June 2006, Moscow violated the daily maximum effluent limit for fecal coliform bacteria a
21 total of two (2) months, constituting two (2) violations. The violations are as follows:

22

Month of Violation	Number of Violations
April 2003	1
October 2004	1

23
24
25

3.14. Section I.A. of the Permit contains an effluent limit for dissolved oxygen in discharges from the Facility that requires the dissolved oxygen level in the effluent to be, at a minimum, 8.0 mg/L. In addition, the Permit requires Moscow to monitor the effluent for dissolved oxygen three (3) times per week. Between March 2002 and June 2006, Moscow violated the dissolved oxygen effluent limit a total of thirteen (13) months, constituting 105 violations. The violations are as follows:

Month of Violation	Number of Violations
July 2002	7
February 2003	2
July 2003	1
June 2004	5
July 2004	18
August 2004	17
September 2004	17
October 2004	5
July 2005	3
August 2005	17
September 2005	7
October 2005	5
June 2006	1

3.15. Section I.A. of the Permit contains a monthly average concentration effluent limit for phosphorus in discharges from the Facility that occur between May 15th and October 15th of 0.136 mg/L. Between March 2002 and June 2006, Moscow violated the monthly average concentration effluent limit for phosphorus a total of thirteen (13) months, constituting 336 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2004	16
June 2004	30

Month of Violation	Number of Violations
July 2004	31
August 2004	31
September 2004	30
October 2004	15
May 2005	16
June 2005	30
July 2005	15
August 2005	31
September 2005	30
October 2005	31
June 2006	30

3.16. Section I.A. of the Permit contains a monthly average mass effluent limit for phosphorus in discharges from the Facility that occur between May 15th and October 15th of 4.1 lbs/day. Between March 2002 and June 2006, Moscow violated the monthly average mass effluent limit for phosphorus a total of ten (10) months, constituting 244 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2004	16
June 2004	30
July 2004	31
August 2004	31
September 2004	30
October 2004	15
May 2005	16
June 2005	30
September 2005	30
October 2005	15

3.17. Section I.A. of the Permit contains a weekly average concentration effluent limit for phosphorus in discharges from the Facility that occur between May 15th and October 15th of 0.27 mg/L. Between March 2002 and June 2006, Moscow violated the weekly average concentration effluent limit for phosphorus a total of thirteen (13) months, constituting 91 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2004	7
June 2004	7
July 2004	7
August 2004	7
September 2004	7
October 2004	7
May 2005	7
June 2005	7
July 2005	7
August 2005	7
September 2005	7
October 2005	7
June 2006	7

3.18. Section I.A. of the Permit contains a weekly average mass effluent limit for phosphorus in discharges from the Facility that occur between May 15th and October 15th of 8.2 lbs/day. Between March 2002 and June 2006, Moscow violated the weekly average mass effluent limit for phosphorus a total of eight (8) months, constituting 56 violations. The violations are as follows:

Month of Violation	Number of Violations
June 2004	7
August 2004	7
September 2004	7

Month of Violation	Number of Violations
October 2004	7
May 2005	7
June 2005	7
September 2005	7
October 2005	7

3.19. Under Section 309(g)(1) of the CWA, 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 limitations ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Permit violations alleged for the Facility constitute violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Moscow is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$11,000 per day for each day during which the violation continues, up to a maximum amount of \$157,500.

IV. CONSENT AGREEMENT

4.1. Moscow stipulates that EPA has jurisdiction over the subject matter alleged herein.

4.2. As required under 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 Moscow’s economic benefit of noncompliance, ability to pay, and such other matters as justice may require. After considering all of these factors, EPA has determined and Moscow agrees that an appropriate penalty to settle this action is in the amount of One Hundred Thirty Four Thousand Dollars (\$134,000.00).

4.3. Moscow neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

1 4.4. Moscow consents to issuance of the Final Order set forth in Part V, below, and
2 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days of
3 the effective date of this Final Order.

4 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
5 payable to the order of "Treasurer, United States of America" and delivered to the following
6 address:

7 Mellon Bank
8 EPA Region 10
9 P.O. Box 36903M
10 Pittsburgh, Pennsylvania 15251

11 Moscow shall note on the check the title and docket number of this action.

12 4.6. Moscow shall serve photocopies of the check described in Paragraph 4.5, above,
13 on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement
14 at the following addresses:

15 Regional Hearing Clerk
16 U.S. Environmental Protection Agency
17 Region 10
18 1200 Sixth Avenue, ORC-158
19 Seattle, WA 98101

20 Office of Compliance and Enforcement
21 Attn: Jamie Sikorski
22 U.S. Environmental Protection Agency
23 Region 10
24 1200 Sixth Avenue, OCE-133
25 Seattle, WA 98199

4.7. If Moscow fails to pay the penalty assessed by this CAFO in full by the due date
set forth in Paragraph 4.4, above, the entire unpaid balance of penalty and accrued interest shall
become immediately due and owing. If Moscow fails to pay the penalty assessed, Moscow may
be subject to a civil action to collect the assessed penalty under the CWA, together with interest,

1 fees, costs, and additional penalties described below. In any collection action, the validity,
2 amount, and appropriateness of the penalty shall not be subject to review.

3 4.8. If Moscow fails to pay any portion of the penalty assessed by this CAFO in full
4 by the due date set forth in Paragraph 4.4, above, Moscow shall be responsible for payment of
5 the amounts described below:

6 4.8.1. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9),
7 any unpaid portion of the assessed penalty shall bear interest at a rate established by the
8 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
9 Final Order set forth in Part V, below, provided, however, that no interest shall be
10 payable on any portion of the assessed penalty that is paid within thirty (30) days of the
11 effective date of the Final Order.

12 4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
13 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Moscow fails to pay on a timely
14 basis the amount of the penalty set forth in Paragraph 4.3, above, Moscow shall pay (in
15 addition to any assessed penalty and interest) attorneys fees and costs for collection
16 proceedings and a quarterly nonpayment penalty for each quarter during which such
17 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty
18 percent (20%) of the aggregate amount of Moscow's penalties and nonpayment penalties
19 which are unpaid as of the beginning of such quarter.

20 4.9. The penalty described in Paragraph 4.2, above, including any additional costs
21 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA
22 and shall not be deductible for purposes of federal taxes.

1 4.10. The undersigned representative of Moscow certifies that he or she is fully
2 authorized to enter into the terms and conditions of this CAFO and to bind Moscow to this
3 document.

4 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own
5 costs in bringing or defending this action.

6 4.12. Moscow expressly waives any rights to contest the allegations and waives any
7 right to appeal the Final Order set forth in Part V, below.

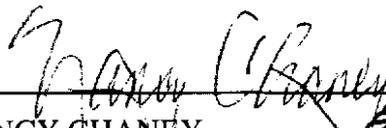
8 4.13. The provisions of this CAFO shall bind Moscow and its agents, servants,
9 employees, successors, and assigns.

10 4.14. The above provisions are STIPULATED AND AGREED upon by Moscow and
11 EPA.

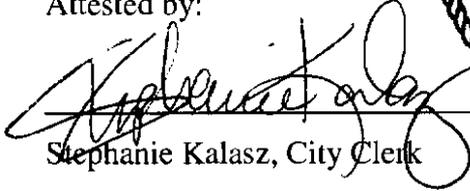
12 DATED:

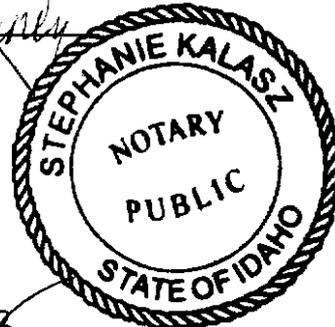
CITY OF MOSCOW:

13
14 4-18-07

15 
16 NANCY CHANEY
17 Mayor
18 For Respondent

19 Attested by:

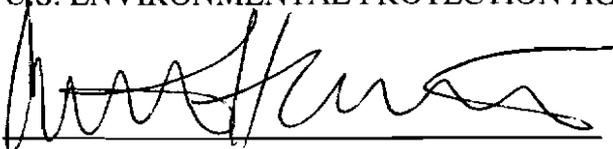
20 
21 Stephanie Kalasz, City Clerk



22 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

23 4/24/07

24 
25 COURTNEY J. HAMAMOTO
Assistant Regional Counsel
For Complainant

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V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Moscow is hereby ordered to comply with the foregoing terms of the settlement.

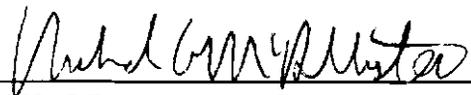
5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Moscow's obligations to comply with all applicable provisions of the CWA, applicable CWA regulations, and/or any 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 Moscow.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Moscow and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have elapsed since the 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.

1 SO ORDERED this 8th day of June, 2007.
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3 
4 _____

5 RICHARD G. McALLISTER
6 Regional Judicial Officer
7 U.S. Environmental Protection Agency
8 Region 10
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: City of Moscow, DOCKET NO.: CWA-10-2007-0114** was filed with the Regional Hearing Clerk on June 19, 2007.

On June 19, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire
1200 Sixth Avenue, ORC-158
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 on June 19, 2007, to:

Nancy Chaney, Mayor
City of Moscow
P.O. Box 9203
Moscow, Idaho 83843

DATED this 19th day of June 2007.



Carol Kennedy
Regional Hearings Clerk
EPA Region 10



U.S. Environmental Protection Agency Region 10: The Pacific Northwest

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EPA proposes Penalty Against City of Moscow, Idaho for Clean Water Act Violations

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10 (ORC-158)
1200 SIXTH AVENUE
SEATTLE, WA 98101

Date of Notice: April 30, 2007

Comment Period Open Until: May 30, 2007

Action: Proposed Penalty Assessment under the Clean Water Act

Description of Violation and Relief Sought: Pursuant to Section 309(g)(4) of the Clean Water Act ("Act"), the Environmental Protection Agency, Region 10 ("EPA") is providing public notice of the proposed penalty described below. In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to 40 days after publication of this notice.

EPA proposes to commence an administrative penalty action against the City of Moscow, Idaho ("Respondent") for violation of the Clean Water Act ("CWA"). EPA alleges that the Respondent is in violation of its National Pollutant Discharge Elimination System ("NPDES") individual permit authorized under Section 402 of CWA. Violations include: Phosphorus, Dissolved Oxygen ("DO"), Total Residual Chlorine ("TRC") and Fecal Coliform Bacteria. EPA proposes to assess a penalty in the amount of \$134,000.

Persons wishing to comment on EPA's proposed action or to become participants in this action may do so by submitting their address and telephone number, along with written comments, to the Regional Hearing Clerk at the address above within 30 days of the date of this notice. This is a Class II administrative penalty proceeding, governed by Section 309(g)(2)(B) of the CWA and the procedural rules found at 40 C.F.R. Part 22. The requirements that apply to public comment and participation are set forth in 40 C.F.R. § 22.45.

Name of Case: City of Moscow Wastewater Treatment Facility

Docket Number of the Complaint: CWA-10-2007-0114

Name and address of Complainant:

Michael A. Bussell, Director
Office of Compliance and Enforcement
U.S. Environmental Protection Agency
Region 10 (OCE-164)
1200 Sixth Avenue
Seattle, Washington 98101

Name and address of Respondent:

City of Moscow
P.O. Box 9203
Moscow, Idaho 83843

Name, address, and telephone number of Regional Hearing Clerk:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-0242

Location of Facility: Moscow, Idaho

Applicable Permit No.: ID-002149-1

Business/activity of Respondents: wastewater treatment facility

Comments Accepted: In accordance with 40 C.F.R. § 22.45, any person wishing to comment on or participate in this proceeding must notify the Regional Hearing Clerk within 30 days of this notice. The person must provide a name, complete mailing address, and any comments the person has on this action.

A copy of the administrative complaint is available for review and copying between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at EPA's Seattle Office (see address listed above).

For any additional information on this action, please contact Jamie Sikorski at (206) 553-5153.

04/26/2007

*Unit: NPDES Compliance Unit
Point of contact: Jamie Sikorski
Email: sikorski.jamie@epa.gov
Phone Number: (206) 553-5153
Last Updated: 04/26/2007 05:34:39 PM*

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