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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF SALMON, WASTEWATER
TREATMENT FACILITY,
Salmon, Idaho,

Respondent.

DOCKET NO. CWA-10-2016-0098

**CONSENT AGREEMENT AND
FINAL ORDER**

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” or “the Act”), 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 Salmon (“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 Act and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, into the waters of the United States, subject to certain requirements of the CWA and upon such terms and conditions as the Administrator may prescribe.

3.3. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States” under Section 502(7) of the Act, 33 U.S.C. § 1362(7). “Waters of the United States” include all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; the territorial seas; and all impoundments and tributaries of such waters.
40 C.F.R. § 122.2.

3.4. A “pollutant,” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), includes, in part, “rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

3.5. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” to include, among others, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container ... from which pollutants are or may be discharged.”

Factual Background

3.6. Respondent is a “municipality” as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.7. Respondent owns and/or operates a wastewater treatment plant (“Facility”) located in Salmon, Idaho.

3.8. At all times relevant to this action, Respondent was authorized to discharge treated wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID0020001 (“Permit”). The Permit became effective on October 1, 2007, and expired on

September 30, 2012. A permit application was received and the Permit was administratively extended on March 1, 2012, pursuant to 40 C.F.R. § 122.6.

3.9. The Facility discharges pollutants from Outfall 001 to the Salmon River. Outfall 001 is a “point source” as defined in 40 C.F.R. § 122.2.

3.10. The Salmon River is a tributary to the Snake River and a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.11. Part I.B. of the Permit establishes effluent limits for the discharges from Outfall 001. These effluent limits include, but are not limited to, biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), and *Escherichia coli* (“*E. coli*”).

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

3.13. When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the month in which the exceedance occurred that the facility was discharging effluent. 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 that the facility was discharging effluent. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation. Respondent’s DMRs, beginning in December 2010, indicate that the Facility had 605 violations of the effluent limits set forth in the Permit.

3.14. Part I.B.1 of the Permit specifies that the instantaneous maximum limit of *E. coli* in the effluent shall not exceed 406/100 ml. Since December 2010, Respondent exceeded the

instantaneous maximum limit for *E. coli* one time, constituting one violation. The violation is as follows:

Month of Violation	Number of Violations
August 2011	1

3.15. Part I.B.5 of the Permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 15% of the monthly average influent concentration. This represents a minimum 85% removal requirement. Since December 2010, Respondent did not meet the 85% average monthly removal of TSS 10 times, constituting 305 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2010	31
January 2011	31
March 2011	31
April 2011	30
July 2011	31
January 2012	31
February 2012	29
March 2013	31
April 2013	30
April 2014	30

3.16. Part I.B.1 of the Permit specifies that the average weekly loading of TSS in the effluent shall not exceed 30 lbs/day. Since December 2010, Respondent exceeded the average weekly loading limit for total TSS one time, constituting seven violations. The violations are as follows:

Month of Violation	Number of Violations
April 2013	7

3.17. Part I.B.1 of the Permit specifies that the average weekly concentration of total TSS in the effluent shall not exceed 45 mg/L. Since December 2010, Respondent exceeded the average weekly concentration limit for total TSS three times, constituting 21 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2010	7
March 2012	7
April 2013	7

3.18. Part I.B.1 of the Permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 30 mg/L. Since December 2010, Respondent exceeded the average monthly concentration limit for TSS four times, constituting 123 violations. The violations are as follows:

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

3.19. Part I.B.5 of the Permit specifies that the monthly average effluent concentration of BOD shall not exceed 15% of the monthly average influent concentration. This represents a minimum 85% removal requirement. Since December 2010, Respondent did not meet the 85%

average monthly removal of BOD five times, constituting 148 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2011	28
June 2011	30
July 2011	31
February 2012	29
April 2013	30

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 \$6,813.00.

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:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Raymond Andrews, Compliance Officer
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 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. Except as described in Subparagraph 4.7.2, 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 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:

6-6-16

FOR RESPONDENT:

Leo Marshall

LEO MARSHALL, Mayor
City of Salmon, Wastewater Treatment Facility

DATED:

7/13/2016

FOR COMPLAINANT:

Edward J. Kowalski

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.

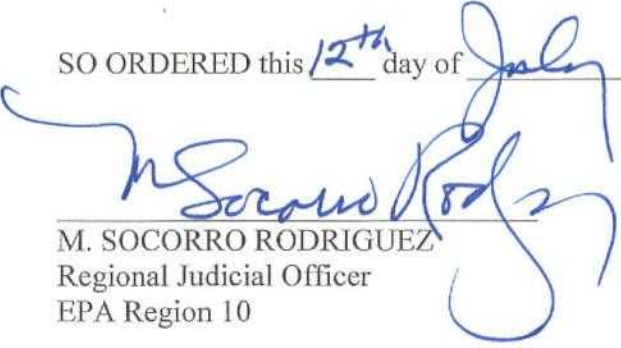
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 12th day of July, 2016.



M. SOCORRO RODRIGUEZ
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 SALMON, WASTEWATER TREATMENT FACILITY, DOCKET NO.: CWA-10-2016-0098** was 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:

Heather Mapes
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, 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 to:

Mayor Leo Marshall
City of Salmon, Wastewater Treatment Facility
200 Main Street
Salmon, Idaho 83467

DATED this 13 day of July, 2016



Signature

Teresa Luna
Regional Hearing Clerk
EPA Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

MAY 27 2016

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. John Tippets
Director
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: City of Salmon, Idaho Wastewater Treatment Plant
Docket No. CWA-10-2016-0098

Dear Mr. Tippets:

This is to advise you of a penalty action which Region 10 of the U.S. Environmental Protection Agency (EPA) has initiated in the state of Idaho. The proposed actions will address alleged violations of the Clean Water Act by the City of Salmon Wastewater Treatment Plant located at 43 Lemhi Hole Road, Salmon, Idaho 83467.

Please consider this an opportunity to provide EPA Region 10 with any comments the Idaho Department of Environmental Quality may have regarding these actions. A copy of the public notice for the penalty action will be available at <http://yosemite.epa.gov/R10/homepage.nsf/Information/R10PN>. Please direct any comments or questions you may have regarding these actions to Raymond Andrews of my staff at (206) 553-4252. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Kowalski".

Edward J. Kowalski
Director

cc: Mr. Stephen Berry
Idaho Department of Environmental Quality
stephen.berry@deq.idaho.gov

Mr. Erick Neher
Idaho Department of Environmental Quality
Idaho Falls Regional Administrator
erick.neher@deq.idaho.gov

CWA Public Notice Form

Proposed Penalty Against The City Of Salmon, Idaho For Clean Water Act Violations

Public Notice Summary

Action: Penalty Assessment under the Clean Water Act

Date of Notice: June 2, 2016

Comment Period Ends: July 2, 2016

Case Name: The City Of Salmon, Idaho

Complaint Docket Number: CWA-10-2016-0098

How to Submit Comments: In accordance with 40 C.F.R. § 22.45, anyone wishing to comment on or participate in this proceeding must notify the Regional Hearing Clerk within 30 days of this notice. Please provide your name, complete mailing address, and any comments you have on this action.

Description: Pursuant to Section 309(g)(4) of the Clean Water Act ("CWA"), 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, the EPA will not take final action in this proceeding prior to 40 days after publication of this notice.

EPA proposes to enter into a Consent Agreement and Final Order (CAFO) with City of Salmon, Idaho ("Respondent") for violations of the Clean Water Act at its Wastewater Treatment Plant located in Salmon, Idaho. EPA alleges that the Respondent had discharges of wastewater containing pollutants that exceeded the limitations of its permit. Respondent has corrected the violations and, with this CAFO, agrees to pay a civil penalty of \$6,813.

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.

For additional information on this action or to obtain a copy of the consent agreement and final order, please contact Raymond Andrews at (206) 553-4252.

Comments Accepted: Persons wishing to comment on the 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 below within 30 days of the date of this notice.

Regional Hearing Clerk:	Complainant:	Respondent:
Teresa Luna, Regional Hearing Clerk U.S. Environmental Protection Agency Region 10 (ORC-158) 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140 (206) 553-6524	Edward J. Kowalski, Director Office of Compliance and Enforcement U.S. Environmental Protection Agency Region 10 (OCE-101) 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140	City of Salmon 200 Main Street Salmon, Idaho 83467

Facility Location(s): City of Salmon Wastewater Treatment Plant
43 Lemhi Hole Road
Salmon, Idaho 83467

Applicable Permit Number: ID0020001

Business/Activity of Respondent: Municipality

Keywords: Idaho
The City Of Salmon, Idaho
ID0020001
CWA-10-2016-0098
Public Notice