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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF GLENN'S FERRY

Glenn's Ferry, Idaho

Respondent.

DOCKET NO. CWA-10-2019-0122

**CONSENT AGREEMENT**

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

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into 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 any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.1. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes 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 \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415.

1.2. Pursuant to CWA Section 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 City of Glenns Ferry (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), execution 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 navigable waters 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. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” CWA § 502(12), 33 U.S.C. § 1362(12).

3.4. The CWA defines a “pollutant” to include “industrial, municipal, and agricultural waste discharged into water.” CWA § 502(6), 33 U.S.C. § 1362(6).

3.5. The CWA defines “point source” to include, *inter alia*, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.6. The CWA § 502(7) defines ‘navigable waters’ as ‘the waters of the United States, including the territorial seas.’ 33 U.S.C. § 1362(7). In turn, ‘waters of the United States’ has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 40 C.F.R. §§ 122.2 & 110.1 (1993).”

3.7. Section 402(a) of the CWA, 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

navigable waters upon such specific terms and conditions as the Administrator may prescribe.

3.8. On January 1, 2012, EPA issued NPDES Permit No. ID 00220044 (“2012 Permit”), authorizing Respondent to discharge municipal wastewater containing pollutants from the Facility. The 2012 Permit expired on December 31, 2016, but it was administratively extended pursuant to 40 C.F.R. § 122.6. Therefore, NPDES Permit No. ID-00220044 is currently the controlling NPDES permit for the Facility.

### **General Allegations**

3.9. Respondent is a “municipality,” organized under the laws of the State of Idaho, with jurisdiction over the disposal of sewage, industrial wastes, or other wastes, and a “person” under CWA Section 502(4)-(5), 33 U.S.C. § 1362(4)-(5).

3.10. Respondent owns and/or operates the City of Glens Ferry Wastewater Treatment Facility (“Facility”) located in Glens Ferry, Idaho, at 901 South Steen Drive, City of Glens Ferry, Idaho.

3.11. At all times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID0022004 (effective date January 1, 2012) (“2012 Permit”).

3.12. The Facility discharges pollutants from Outfall 001, which discharges into the Snake River. Outfall 001 is a “point source.” CWA § 502(14), 33 U.S.C. § 1362(14), 40 C.F.R. § 122.2.

3.13. The Snake River flows into the Columbia River, which flows into the Pacific Ocean. The Snake River is navigable in fact and is an interstate water body that is subject to interstate commerce. As such, the Snake River is a “navigable water.” CWA § 502(7), 33 U.S.C.

§ 1362(7).

3.14. Defendant has discharged pollutants from a point source into navigable waters at the Facility, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2 (2014).

#### **Violations**

3.15. As described below, by discharging domestic wastewater containing pollutants from the Facility into navigable waters, 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). Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its 2012 Permit.

3.16. Part I.B.1 of the Permit establishes effluent limits for the discharge from Outfall 001. These effluent limits include 5-day biochemical oxygen demand (“BOD<sub>5</sub>”), *Escherichia coli* (“*E. coli*”), potential of hydrogen (“pH”), total residual chlorine (“TRC”), and total suspended solids (“TSS”).

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

3.18. Each failure to comply with the effluent limitations, operations, monitoring, record keeping requirements specified in the Permit, issued pursuant to Section 402 of the CWA, is a violation of the terms and conditions of the Permit, and is a violation of Section 301(a) of the CWA. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.19. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation. 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 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.

3.20. Respondent's DMRs from June 2015 through March 2018 indicate that the Facility had 228 violations of the CWA: 226 violations of the effluent limits set forth in the Permit, 1 violation for improper continuous flow monitoring, and 1 violation for improper operation and maintenance.

**Count 1: 226 Effluent Limit Violations**

3.21. The statements in Paragraphs 1 – 3.20 are hereby incorporated by reference as if set forth in full.

3.22. Respondent's DMRs from June 2015 through March 2018 indicate that the Facility had 226 effluent limit violations, constituting 226 violations of the CWA.

3.23. The specific pollutants for which the effluent limit violations were assessed are BOD, TSS, and *E.coli*.

3.24. Part 1.B.1. of the permit specifies that the average weekly loading of BOD in the effluent shall not exceed 188 Lb/day. On July 2015, Respondent exceeded the average weekly loading limit for BOD 1 time, constituting 7 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit	% Over
July	BOD	188	325	lb/day	72.9

3.25. Part 1.B.1. of the permit specifies that the average monthly concentration of BOD in the effluent shall not exceed 30 mg/L. On May 2017, Respondent exceeded the average

monthly concentration limit for BOD 1 time, constituting 31 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	% Over
May 2017	BOD	30	34	mg/L	13.3

3.26. Part 1.B.1. of the permit requires the average monthly BOD removal from the influent of at least 85%. During the period from June 2015 to May 2017, Respondent failed to achieve average monthly BOD removal from the influent of at least 85% 3 times, constituting 61 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit	% Over
June 2015	BOD % removal	85	84.8	%	1.3
May 2017	BOD % removal	85	83	%	13.3

3.27. Part 1.B.1. of the permit specifies that the instantaneous maximum E.coli count in the effluent shall not exceed 406/100ml. During the period from September 2016 to September 2017, Respondent exceeded the instantaneous maximum limit count for E.coli 6 times, constituting 6 violations. The violations are as follows:

Date of Violation	Pollutant	Permit Limit	Value Reported	Units	% Over
September 2016	<i>E. coli</i>	406	2400	#100mL	491.1
December 2016	<i>E. coli</i>	406	820	#100mL	102.0
January 2017	<i>E. coli</i>	406	2420	#100mL	496.1
February 2017	<i>E. coli</i>	406	2400	#100mL	491.1
March 2017	<i>E. coli</i>	406	2400	#100mL	491.1
September 2017	<i>E. coli</i>	406	520	#100mL	28.1

3.28. Part 1.B.1. of the permit specifies that the average monthly E.coli count in the effluent shall not exceed 126/100ml. During the period from January 2017 to March 2017, Respondent exceeded the average monthly limit count for E.coli 3 times, constituting 90 violations. The violations are as follows:

Date of Violation	Pollutant	Permit Limit	Value Reported	Units	% Over
January 2017	<i>E. coli</i>	126	1837	#100mL	1357.9
February 2017	<i>E. coli</i>	126	2400	#100mL	1804.8
March 2017	<i>E. coli</i>	126	669	#100mL	431.0

3.29. Part 1.B.1. of the permit specifies that the average monthly concentration of TSS in the effluent shall not exceed 30 mg/L. During March 2018, Respondent exceeded the average monthly concentration limit for TSS 1 time, constituting 31 violations. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units	% Over
March 2018	TSS	30	33	mg/L	10.0

**Count 2: 1 Continuous Flow Monitoring Violation**

3.30. The statements in Paragraphs 1 – 3.20 are hereby incorporated by reference as if set forth in full.

3.31. Part 1.B.1. of the permit requires continuous influent flow monitoring.

3.32. At the time of the inspection, the Partlow chart recorder was not working and was not able to continuously record the influent flow.

**Count 3: 1 Operation and Maintenance Violation**



3.33. The statements in Paragraphs 1 – 3.20 are hereby incorporated by reference as if set forth in full.

3.34. Part IV.E. of the permit specifies the permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

3.35. At the time of the inspection, one mechanical surface aerator in Lagoon 1 was not operational; there was visible buildup of solids and vegetative growth in Lagoon 1. In addition, the pH meter and influent flow meter was not calibrated.

#### **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 violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$2,000.00.

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:

Teresa Young, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, M/S ORC-11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
young.teresa@epa.gov

Chae Park, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, M/S ECAD-20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
park.chae@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, 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., 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 this Consent Agreement and the Final Order.


4.13. The provisions of this Consent Agreement and the Final Order 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:

7/24/2019

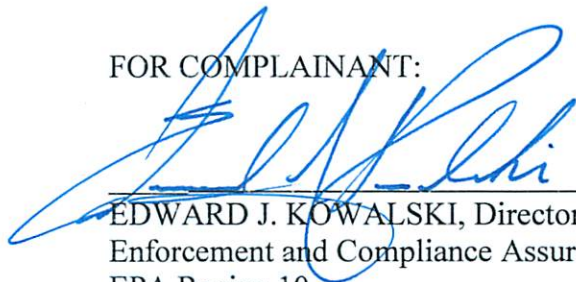
FOR RESPONDENT:

  
The Honorable Monty R. White, Mayor  
City of Glens Ferry, Idaho

DATED:

8/27/2019

FOR COMPLAINANT:

  
EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF GLENNS FERRY

Glenns Ferry, Idaho

Respondent.

DOCKET NO. CWA-10-2019-0122

**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. This Final Order shall become effective upon filing.

SO ORDERED this 5<sup>th</sup> day of September, 2019.



RICHARD MEDNICK  
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 Glens Ferry, Docket No.: CWA-10-2019-0122** 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:

Clarke Thurmon  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-11-C07  
1200 Sixth Avenue, Suite 155  
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:

Jill S. Holinka  
MSBT Law  
7699 W. Riverside Drive  
Boise, ID 83714

DATED this 9 day of September, 2019.

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