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EPA -- REGION 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington

In the matter of:

DOCKET NO. CWA-10-2000-0063

City and Borough of Juneau, Alaska,
Mendenhall Wastewater Treatment
Facility

COMPLAINT

Respondent.

I. AUTHORITIES

1. This administrative complaint for civil penalties ("Complaint") 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 ("Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has re delegated it to the Director of the EPA Region 10 Office of Water.

2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Part 22 Rules"), EPA hereby proposes the assessment of a civil penalty against the City and Borough of Juneau, Alaska ("Respondent") for failure to comply with a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, and for unlawful discharges of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORIGINAL

II. ALLEGATIONS

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, 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. Section 504(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.”

4. Section 402 of the Act, 33 U.S.C. § 1342, provides that EPA may issue NPDES permits authorizing the discharge of pollutants into navigable waters upon such specific terms and conditions as EPA may prescribe.

5. Respondent operates the Mendenhall Wastewater Treatment Facility (“Facility”) located in Juneau, Alaska.

6. Respondent is a municipality and therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1365(5).

7. Respondent is authorized to discharge treated municipal wastewater from the Facility under NPDES Permit No. AK0022951 (“Permit”). The Permit became effective on September 8, 1994. The Permit expired on September 8, 1999, but was administratively extended.

8. The Facility, which was under Respondent’s control at all times relevant to this action, discharged treated municipal wastewater from its Outfall 001 to the Mendenhall River.

9. Outfall 001 is a “point source,” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

10. Municipal wastewater is a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

11. The Mendenhall River is “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” within the meaning of 40 C.F.R. § 122.2.

12. The Permit specifies the conditions under which Respondent may discharge treated municipal wastewater from the Facility to the Mendenhall River.

1 13. Part I.A.4. of the Permit specifies that the monthly average, weekly average, and daily
2 maximum limits for fecal coliform shall not exceed 200 colonies/100ml, 400 colonies/100ml, and
3 800 colonies/100ml, respectively.

4 14. During the period from June 1999 to November 1999, the Facility exceeded the effluent
5 limits for fecal coliform on 6 occasions. The specifics of each exceedance including the discharge
6 monitoring report ("DMR") months, the permit limits, and the actual discharge values are as follows:

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8 DMR Month	Permit Limit	Limit Type	Actual Discharge
9 June 1999	400 colonies/100ml	weekly average	456 colonies/100ml
10 September 1999	200 colonies.100ml	monthly average	218 colonies/100ml
11 September 1999	400 colonies/100ml	weekly average	930 colonies/100ml
12 September 1999	800 colonies/100ml	daily maximum	1600 colonies/100ml
13 November 1999	400 colonies/100ml	weekly average	4183 colonies/100ml
14 November 1999	800 colonies/100ml	daily maximum	3,500,000 colonies/100ml

15 15. Part III.E. of the Permit requires that Respondent shall at all times properly operate
16 and maintain all facilities and systems of treatment and control (and related appurtenances) which
17 are installed or used by Respondent to achieve compliance with conditions of the Permit.

18 16. On August 29, 1999, untreated municipal wastewater from the Facility discharged
19 into houses and overflowed into a parking lot as a result of Respondent's failure to properly operate
20 and maintain the Facility as required by Part III.E. of the Permit.

21 17. Part III.G.2. of the Permit requires Respondent to report to EPA any unanticipated
22 bypass of the Facility within 24 hours of becoming aware of the circumstances.

23 18. Respondent failed to report the August 29, 1999, bypass of untreated sewage within
24 24 hours as required by the Permit.

25 19. The discharges of treated municipal wastewater in exceedance of permit limitations
26 (as described in Paragraph 14), the failure to properly operate the Facility (as described in Paragraph
27

1 16), and the failure to notify EPA (as described in Paragraph 18), constitute violations of the Permit
2 conditions.

3 20. On August 29, 1999, untreated municipal wastewater from the Facility discharged
4 into a drainage ditch that flows to the Gastineau Channel.

5 21. On November 1, 1999, untreated municipal wastewater from the Facility was
6 discharged into a drainage ditch that flows to the Gastineau Channel.

7 22. The discharges of untreated municipal wastewater described in Paragraphs 20 and 21
8 were not through the outfall described in the Permit.

9 23. Each discharge of untreated municipal wastewater described in Paragraphs 20 and 21
10 constitutes a discharge of a pollutant from a point source to navigable waters that has not been
11 authorized under an NPDES permit.

12 24. Each discharge of untreated municipal wastewater described in Paragraphs 20 and 21
13 was an unauthorized discharge of pollutants to waters of the United States and constituted a violation
14 of Section 301 of the Act, 33 U.S.C. § 1311(a).

15 25. Consequently, pursuant to Sections 309(g)(1)(A) and (2)(B) of the Act, 33 U.S.C.
16 §§ 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative
17 assessment of civil penalties in an amount not to exceed \$11,000 per day for each day during which a
18 violation continues up to a maximum of \$137,500.

19 20 **III. PROPOSED PENALTY**

21 26. Based on the foregoing allegations, EPA hereby proposes that the Presiding Officer
22 assess an administrative penalty against Respondent, for the violations cited above, in the amount of
23 SIXTY THOUSAND DOLLARS (\$60,000.00).

24 27. EPA determined the proposed penalty based on the applicable statutory penalty
25 factors in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). These factors are the nature,
26 circumstances, extent, and gravity of the violations and, with respect to Respondent, ability to pay,
27 prior history of such violations, the degree of culpability, economic benefit or savings resulting from
28

1 the violations, and other appropriate factors to the extent the information is available for such
2 determinations.

3 28. The violations described above are significant. The majority of the violations
4 involved unauthorized discharges of both treated and untreated sewage. The sewage was
5 inappropriately discharged into homes, the Mendenhall River, a wetland, and the Gastineau Channel.
6 Sewage contains high levels of fecal coliform bacteria and can pose a significant health hazard. One
7 violation exceeded the permitted level of fecal coliform by more than 430,000 percent. Sewage can
8 contain a number of bacterial and viral pathogens, and parasites. Human illnesses that can be caused
9 by these microorganisms can result in gastroenteritis, fever, kidney failure, and even death.

10 29. By avoiding or delaying the costs associated with implementing proper operation and
11 maintenance controls that would have ensured compliance with the Act, Respondent realized
12 economic benefit as a result of the violations alleged above.

13 30. Based on information currently available to EPA, Respondent has the ability to pay
14 the proposed penalty.

16 **IV. OPPORTUNITY TO REQUEST A HEARING**

17 31. Respondent has the right to file an Answer requesting a hearing on any material fact
18 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,
19 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in
20 accordance with provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C.
21 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

22 32. Respondent's Answer, including any request for hearing, must be in writing and must
23 be filed with:

24 Regional Hearing Clerk
25 U.S. Environmental Protection Agency
26 1200 Sixth Avenue, Mail Stop ORC-158
27 Seattle, Washington 98101
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V. FAILURE TO FILE AN ANSWER

33. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint.

34. In accordance with 40 C.F.R. § 22.15, Respondent’s Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Respondent’s Answer must also state: (1) the circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts that Respondent intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

VI. INFORMAL SETTLEMENT CONFERENCE

35. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondent should contact:

Cara Steiner-Riley
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101
(206) 553-1142

36. Note that a request for an informal settlement conference dose not extend the thirty (30) day period for filing a written answer to this Complaint, nor does it waive Respondent’s right to request a hearing.

VII. RESERVATIONS

37. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondent’s continuing obligations to comply with: (1) the Clean Water Act and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act

1 permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of the Act, 33
2 U.S.C. § 1319(a), concerning the violations alleged herein.


3
4 **VIII. QUICK RESOLUTION AND SETTLEMENT**

5 38. In accordance with Section 22.18 of the Consolidated Rules of Practice, Respondent
6 may resolve this action at any time after ten (10) days following the close of public comment on this
7 Complaint by mailing the proposed penalty in full to:

8 EPA Region 10 Hearing Clerk
9 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903

10 39. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of
11 Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually
12 related proceedings with the Administrator, the Environmental Appeals Board or its members, the
13 Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person
14 who is likely to advise these officials in the decision on the case.

15
16 Dated this 8th day of September, 2000.

17
18 
19 for Randall F. Smith
Director
Office of Water

1 CERTIFICATE OF SERVICE

2
3 I certify that the foregoing "Complaint" was sent to the following persons, in the manner
4 specified, on the date below:

5 Original and one copy hand-delivered:

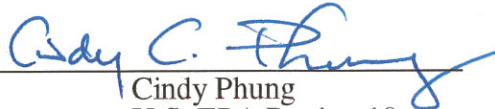
6 Mary Shillcutt, Regional Hearing Clerk
7 U.S. Environmental Protection Agency, Region 10
8 1200 Sixth Avenue, Mail Stop ORC-158
9 Seattle, Washington 98101

10 Copy, together with a cover letter and copy of the Part 22 Rules, by certified mail, return receipt
11 requested:

12 David Palmer
13 City Manager
14 155 South Seward Street
15 Juneau, Alaska 99801-1397

16 Dated: _____

9/11/00



Cindy Phung
U.S. EPA Region 10