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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2008-0013
)	
CITY OF ASHTON,)	CONSENT AGREEMENT AND
Ashton, 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 Ashton ("Ashton") 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 violation of the CWA, together with specific provisions of the CWA and implementing
9 regulations that Ashton 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. Ashton is a municipality organized under the laws of the State of Idaho and, thus,
18 is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

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

21 3.4. During the times relevant to this action, Ashton was authorized to discharge
22 municipal wastewater containing pollutant from the Facility pursuant to NPDES Permit No. ID-
23 002371-0 ("Permit"). The Permit became effective on August 9, 2001 and expired on August 9,
24 2006.

1 3.5. The Facility, which was under Ashton's control at all times relevant to this action,
2 discharges pollutants from Outfall 001, which is located at latitude 44° 03' 18" and longitude
3 111° 26' 53". Outfall 001 is a "point source" within the meaning of Section 502(14) of the
4 CWA, 33 U.S.C. § 1362(14).

5 3.6. The Facility discharges municipal wastewater containing pollutants into an
6 unnamed perennial stream that flows into Spring Creek. Spring Creek is a tributary of the
7 Henry's Fork River which is a tributary to the Teton River. The Teton River is a "navigable
8 water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a "water of
9 the United States" within the meaning of 40 C.F.R. § 122.2. Therefore, the Henry's Fork River,
10 Spring Creek, and the unnamed perennial stream are "navigable waters" within the meaning of
11 Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and are "waters of the United States" within
12 the meaning of 40 C.F.R. § 122.2.

13 3.7. Part I.A. of the Permit establishes effluent limits for the discharge from Outfall
14 001. These effluent limits include, but are not limited to, biological oxygen demand ("BOD"),
15 total residual chlorine, fecal coliform bacteria, total suspended solids ("TSS"), *E. coli*, and pH.

16 3.8. Part II.B. of the Permit requires Ashton to summarize monitoring results for the
17 Facility each month in a Discharge Monitoring Report ("DMR").

18 3.9. Ashton's DMRs from January 2002 to April 2006 indicate that the Facility had
19 1614 violations of the effluent limits set forth in the Permit. When a permittee exceeds a
20 monthly average effluent limit, the permittee is deemed to be in violation of the effluent limits
21 each of the days of the month in which the violation occurred. When a permittee exceeds a
22 weekly average effluent limit, the exceedance is counted as seven violations. When a permittee
23 exceeds a daily maximum effluent limit, the exceedance is counted as one violation.

1 3.10. In November 2003, Ashton discharged effluent from the Facility a total of twelve
2 (12) days. In May 2004, Ashton discharged effluent from the Facility a total of three (3) days.
3 In June 2004, Ashton discharged effluent from the Facility a total of seven (7) days. In
4 November 2004, Ashton discharged effluent from the Facility a total of six (6) days. In July
5 2006, Ashton discharged effluent from the Facility a total of seven (7) days.

6 3.11. Section I.A. of the Permit contains a monthly average concentration effluent limit
7 for total residual chlorine in discharges from the Facility of 0.5 mg/L. Between January 2002
8 and April 2006, Ashton violated the monthly average concentration effluent limit for total
9 residual chlorine a total of seventeen (17) months, constituting 427 violations. The violations are
10 as follows:

Month of Violation	Number of Violations
January 2002	31
February 2002	28
March 2002	31
April 2002	30
January 2003	31
November 2003	12
March 2004	31
April 2004	30
June 2004	7
November 2004	6
December 2004	31
April 2005	30
June 2005	30
July 2005	7
December 2005	31
March 2006	31
April 2006	30

1 3.12. Section I.A. of the Permit contains a monthly average mass effluent limit for total
2 residual chlorine in discharges from the Facility of 4.2 lbs/day. Between January 2002 and April
3 2006, Ashton violated the monthly average mass effluent limit for total residual chlorine in June
4 2005, constituting 30 violations.

5 3.13. Section I.A. of the Permit contains a weekly average concentration effluent limit
6 for total residual chlorine in discharges from the Facility of 0.75 mg/L. Between January 2002
7 and April 2006, Ashton violated the weekly average concentration effluent limit for total residual
8 chlorine a total of seventeen (17) times, constituting 118 violations. The violations are as
9 follows:

Month of Violation	Number of Violations
January 2002	7
February 2002	7
March 2002	7
April 2002	7
January 2003	7
November 2003	7
December 2003	7
February 2004	7
March 2004	7
April 2004	7
June 2004	7
November 2004	6
December 2004	7
April 2005	7
May 2005	7
June 2005	7
July 2005	7

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24 3.14. Section I.A. of the Permit contains a weekly average mass effluent limit for total
25 residual chlorine in discharges from the Facility of 6.3 lbs/day. Between January 2002 and April

1 2006, Ashton violated the weekly average mass effluent limit for total residual chlorine in June
2 2005, constituting seven (7) violations.

3 3.15. Section I.A. of the Permit contains a weekly average effluent limit for fecal
4 coliform bacteria in discharges from the Facility of 200 colonies/100 mL. Between January
5 2002 and April 2006, Ashton violated the weekly average effluent limit for fecal coliform
6 bacteria a total of five (5) times, constituting 35 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2002	7
March 2002	7
February 2003	7
January 2004	7
February 2004	7

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12 3.16. Section I.A. of the Permit contains a monthly average effluent limit for *E. coli*
13 bacteria in discharges from the Facility of 126 colonies/100 mL. Between January 2002 and
14 April 2006, Ashton violated the monthly average effluent limit for *E. coli* bacteria a total of two
15 (2) months, constituting 57 violations. The violations are as follows:

Month of Violation	Number of Violations
February 2002	28
February 2004	29

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19 3.17. Section I.A. of the Permit contains an instantaneous daily maximum effluent limit
20 for *E. coli* bacteria in discharges from the Facility of 406 colonies/100 mL. Between January
21 2002 and April 2006, Ashton violated the instantaneous daily maximum effluent limit for *E. coli*
22 bacteria a total of three (3) times, constituting three (3) violations. The violations are as follows:

Month of Violation	Number of Violations
February 2002	1

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

3.18. Section I.A. of the Permit contain a monthly average concentration effluent limit for BOD in discharges from the Facility of 30 mg/L. Between January 2002 and April 2006, Ashton violated the monthly average concentration effluent limit for BOD a total of five (5) months, constituting 104 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2002	31
January 2004	31
February 2004	29
June 2004	7
November 2004	6

3.19. Section I.A. of the Permit contains a weekly average concentration effluent limit for BOD in discharges from the Facility of 45 mg/L. Between January 2002 and April 2006, Ashton violated the weekly average concentration effluent limit for BOD in June 2004, constituting seven (7) violations.

3.20. Section I.A. of the Permit contains a monthly average removal requirement for BOD in discharges from the Facility that requires that the monthly average effluent load shall not exceed 15 percent (15%) of the monthly average influent load. Between January 2002 and April 2006, Ashton violated the monthly average removal requirement for BOD a total of fourteen (14) months, constituting 325 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2003	31
February 2004	29
March 2004	31

Month of Violation	Number of Violations
April 2004	30
May 2004	3
June 2004	7
November 2004	6
December 2004	31
February 2005	28
March 2005	31
April 2005	30
May 2005	31
June 2005	30
July 2005	7

3.21. Section I.A. of the Permit contains a monthly average concentration effluent limit for TSS in discharges from the Facility of 30 mg/L. Between January 2002 and April 2006, Ashton violated the monthly average concentration effluent limit for TSS a total of eight (8) months, constituting 170 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2002	31
December 2003	31
April 2004	30
May 2004	3
June 2004	7
November 2004	6
December 2004	31
May 2005	31

3.22. Section I.A. of the Permit contains a weekly average concentration effluent limit for TSS in discharges from the Facility of 45 mg/L. Between January 2002 and April 2006, Ashton violated the weekly average concentration effluent limit for TSS a total of four (4) times, constituting 27 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2002	7
December 2003	7
November 2004	6
December 2004	7

3.23. Section I.A. of the Permit contains a monthly average removal requirement for TSS in discharges from the Facility that requires that the monthly average effluent load shall not exceed 15 percent (15%) of the monthly average influent load. Between January 2002 and April 2006, Ashton violated the monthly average removal requirement for TSS a total of thirteen (13) months, constituting 297 violations. The violations are as follows:

Month of Violation	Number of Violations
December 2003	31
February 2004	29
March 2004	31
April 2004	30
May 2004	3
June 2004	7
November 2004	6
December 2004	31
January 2005	31
April 2005	30
May 2005	31
June 2005	30
July 2005	7

3.24. Section I.A. of the Permit contains a daily range for pH in discharges from the Facility of 6.5 – 9.0 standard units. Between January 2002 and April 2006, Ashton violated the daily range for pH a total of seven (7) months, constituting seven (7) violations. The violations are as follows:

Month of Violation	Number of Violations
April 2004	1
June 2004	1
December 2004	1
April 2005	1
May 2005	1
June 2005	1
April 2006	1

3.25. 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), Ashton 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. Ashton 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 Ashton's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Ashton agrees that an appropriate penalty to settle this action is in the amount of Ten Thousand Dollars (~~\$10,000.00~~).

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

1 4.4. Ashton 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 the 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 U.S. Environmental Protection Agency
8 Fines and Penalties
9 Cincinnati Finance Center
10 PO Box 979077
11 St. Louis, MO 63197-9000

12 Ashton shall note on the check the title and docket number of this action.

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

16 Regional Hearing Clerk
17 U.S. Environmental Protection Agency
18 Region 10, MS ORC-158
19 1200 Sixth Avenue, Suite 900
20 Seattle, WA 98101

21 Office of Compliance and Enforcement
22 Attn: David Domingo
23 U.S. Environmental Protection Agency
24 Region 10, MS OCE-133
25 1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Ashton 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 Ashton fails to pay the penalty assessed, Ashton may be

1 subject to a civil action to collect the assessed penalty under the CWA, together with interest,
2 fees, costs, and additional penalties described below. In any collection action, the validity,
3 amount, and appropriateness of the penalty shall not be subject to review.

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

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

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

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

1 4.10. The undersigned representative of Ashton certifies that he or she is fully
2 authorized to enter into the terms and conditions of this CAFO and to bind Ashton 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. Ashton expressly waives any rights to contest the allegations and waives any right
7 to appeal the Final Order set forth in Part V, below.

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

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

12 DATED:

CITY OF ASHTON:

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14 11-07-07

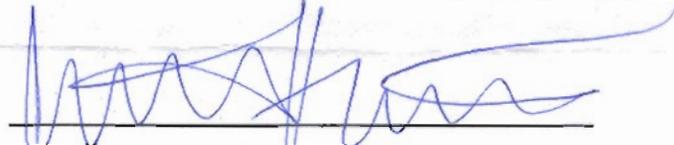


15 THEO R. STRONKS
16 Mayor
17 For Respondent

18
19 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

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21 11/13/07



22 COURTNEY J. HAMAMOTO
23 Assistant Regional Counsel
24 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. Ashton is hereby ordered to comply with the foregoing terms of the settlement.

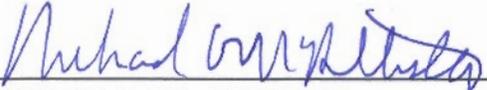
5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or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

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 Ashton 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.

1 5.5. This Final Order shall become effective upon filing.

2
3 SO ORDERED this 3rd day of January, 2008
4 2007. nm

5 

6 RICHARD G. McALLISTER
7 Regional Judicial Officer
8 U.S. Environmental Protection Agency
9 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 Ashton, DOCKET NO.: CWA-10-2008-0013** was filed with the Regional Hearing Clerk on January 3, 2008.

On January 3, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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 on January 3, 2008, to:

Joette Lookabaugh
Ashton City Attorney
P.O. Box 179
Chester, ID 83421

Theo R. Stronks, Mayor
City of Ashton
P.O. Box 689
714 Main Street
Ashton, ID 83420

DATED the 3rd day of January 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10