

RECEIVED

12 DEC 12 AM 8:35

HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2013-0007
	)	
City of Pierce, Idaho	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
	)	
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 or 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 Pierce (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 22.45(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 Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

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 CWA and implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into 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 502(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.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. Respondent is the owner and operator of a water treatment plant (Facility) located in Pierce, Idaho. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. Respondent is also a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

3.4. NPDES Permit ID-002089-3 (WTP Permit) was issued to Respondent on September 25, 2006. The WTP Permit became effective on November 1, 2006 and expired on October 31, 2011. Respondent submitted a timely and complete application to renew the WTP Permit and the permit was administratively extended. The WTP Permit is by administrative extension effective and enforceable until a new permit is issued.

3.5. The Facility, which was under Respondent's control at all times relevant to this action, discharges pollutants from Outfall 001, which is located at latitude 46° 29' 43" North and longitude 115° 47' 49" West. Outfall 001 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.6. The Facility discharges filter backwash and filter-to-waste water containing pollutants into Canal Creek which flows into Orofino Creek, which then flows into the Clearwater River; the Clearwater River flows into the Snake River. The Clearwater River is protected by the State of Idaho for cold water communities, primary contact recreation and salmonid spawning. Canal Creek, Orofino Creek and the Clearwater and Snake Rivers are "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 CFR § 122.2.

3.7. Section I.B of the Permit establishes effluent limitations for the discharge from Outfall 001 and includes, among others, limits for total suspended solids (TSS) and total residual chlorine (TRC).

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

3.9. Respondent's DMRs from August 2007 to June 2012 indicate that the Facility had 1,188 violations of the effluent limitations set forth in the WTP Permit. Exceedance of a monthly average effluent limit is counted as one violation for each day of the month in which the exceedance occurred. Exceedance of a daily maximum effluent limit is counted as one violation.



3.10. Section I.B. of the Permit contains an average monthly concentration effluent limit for TSS of 30 mg/L. Between August 2007 to June 2012, Respondent violated the monthly concentration effluent limit for TSS 18 times, constituting 547 violations.

3.11. Section I.B. of the Permit contains an average monthly mass effluent limit for TSS of 9 lbs/day. Between August 2007 to June 2012, Respondent violated the average monthly mass effluent limit for TSS 11 times, constituting 337 violations.

3.12. Section I.B. of the Permit contains a daily maximum concentration effluent limit for TSS of 45 mg/L. Between August 2007 to June 2012, Respondent violated the daily maximum concentration effluent limit for TSS 16 times, constituting 16 violations.

3.13. Section I.B. of the Permit contains a daily maximum mass effluent limit for TSS of 13.50 lbs/day. Between August 2007 to June 2012, Respondent violated the daily maximum mass effluent limit for TSS 11 times, constituting 11 violations.

3.14. Section I.B. of the Permit contains an average monthly concentration effluent limit for TRC of 0.10 mg/L. Between August 2007 to June 2012, Respondent violated the average monthly concentration effluent limit for TRC 8 times, constituting 243 violations.

3.15. Section I.B. of the Permit contains an average monthly mass effluent limit for TRC of 0.03 lbs/day. Between August 2007 to June 2012, Respondent violated the average monthly mass effluent for TRC in the month of December 2010, constituting 31 violations.

3.16. Section I.B. of the Permit contains a daily maximum concentration effluent limit for TRC of 0.10 mg/L. Between August 2007 to June 2012, Respondent violated the daily maximum concentration effluent limit for TRC 18 times, constituting 18 violations.

3.17. Section I.B. of the Permit contains a daily maximum mass effluent limit for TRC of 0.03 lbs/day. Between August 2007 to June 2012, Respondent violated the daily maximum mass effluent limit for TRC three times, constituting three violations.

3.18. Under Section 309(g) of the Act, 33 U.S.C § 1319(g), EPA may assess an administrative penalty when EPA finds that any person has violated any permit condition or permit limitation in a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator may assess a Class I or Class II civil penalty.

#### **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 **\$2,100**.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

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

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

Office of Compliance and Enforcement  
Attn: Stacey Erickson  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, 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 thirty (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 twenty percent (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 fees and 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:

10/12/2012

FOR RESPONDENT:

Carmen R Syed

Signature

Print Name: Carmen R. Syed

Title: Mayor

DATED:

10/24/2012

FOR COMPLAINANT:

Edward J Kowalski

EDWARD J KOWALSKI

Director

Office of Compliance and Enforcement



## **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 10<sup>th</sup> day of December, 2012.



---

THOMAS M. JAHNKE  
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 Pierce, Idaho Docket No.: CWA-10-2013-0007**, 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:

Mary Stroh Queitzsch  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
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:

The Honorable Carmen R. Syed  
Mayor of Pierce, Idaho  
404 South Main Street  
P.O. Box 356  
Pierce, Idaho 83546

DATED this **12th** day of **December**, 2012



Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10



