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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. CWA-10-2012-0016
)
)
NORTH IDAHO CORRECTIONAL)
INSTITUTION, Cottonwood, Idaho) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
IDAHO DEPARTMENT OF)
CORRECTION,)
)
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 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 Idaho

Department of Correction (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, has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), 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 CWA, 33 U.S.C. § 1342. Section 502(12) of the CWA, 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, the owner and operator of the North Idaho Correctional Institution (NICI), is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent is also a public body created by or pursuant to State law and having jurisdiction over

the disposal of wastes at and from NICI and is a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

3.3. Respondent owns and operates a wastewater treatment facility at NICI (Facility) located in Cottonwood, Idaho.

3.4. NPDES Permit ID-002588-7 (Permit) was issued to Respondent for the Facility and became effective on May 1, 2004. The Permit was set to expire on April 30, 2009. Respondent submitted a timely and complete application to renew the Permit and the Permit was administratively extended. The Permit is by the 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° 4’ 50”N and longitude -116° 26’ 4” W. 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 domestic wastewater containing pollutants into an unnamed creek which flows into Lawyer Creek. The unnamed creek and Lawyer Creek are each a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and are “waters of the United States” within the meaning of 40 C.F.R. § 122.2.

3.7. Section I.A of the Permit establishes effluent limitations for the discharge from Outfall 001 and includes, among others, limits for Biochemical Oxygen Demand (BOD₅), Total Suspended Solids (TSS), E. coli bacteria, pH, and Total Residual Chlorine (TRC).

3.8. Section II.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 March 2006 to November 2010 show that the Facility had 4,101 violations of the effluent limitations set forth in the 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 weekly average effluent limit is counted as one violation for each day of the week in which the exceedance occurred. An exceedance of a maximum daily effluent limit is counted as one violation.

3.10. Section I.A. of the Permit contains an average monthly loading effluent limit for BOD₅ of 8 lbs/day. Between May 2006 and November 2010, Respondent violated the average monthly loading effluent limit for BOD₅ 33 times, constituting 1009 violations. The violations are as follows:

Month of Violation	Number of Violation
May 2006	31
June 2006	30
July 2006	31
September 2006	30
December 2006	31
March 2007	31
May 2007	31
June 2007	30
March 2008	31
April 2008	30
May 2008	31
June 2008	30
July 2008	31
September 2008	30
November 2008	30
December 2008	31
March 2009	31
April 2009	30
May 2009	31
June 2009	30

Month of Violation	Number of Violation
July 2009	31
August 2009	31
September 2009	30
October 2009	31
December 2009	31
March 2010	31
April 2010	30
May 2010	31
June 2010	30
July 2010	31
September 2010	30
October 2010	31
November 2010	30

3.11. Section I.A. of the Permit contains an average monthly concentration effluent limit for BOD₅ of 30 mg/l. Between May 2006 and November 2010, Respondent violated the average monthly concentration effluent limit for BOD₅ 14 times, constituting 427 violations.

The violations are as follows:

Month of Violation	Number of Violations
May 2006	31
April 2007	30
May 2007	31
March 2008	31
April 2008	30
June 2008	30
July 2008	31
March 2009	31
April 2009	30
May 2009	31

Month of Violation	Number of Violations
March 2010	31
June 2010	30
September 2010	30
November 2010	30

3.12. Section I.A. of the Permit contains an average weekly loading effluent limit for BOD₅ of 11 lbs/day. Between May 2006 and November 2010, Respondent violated the average weekly loading effluent limit for BOD₅ 23 times, constituting 161 violations. The violations are as follows:

Month of Violation	Number of Violation
May 2006	7
July 2006	7
March 2007	7
April 2007	7
May 2007	7
June 2007	7
March 2008	7
April 2008	7
June 2008	7
July 2008	7
March 2009	7
April 2009	7
May 2009	7
June 2009	7
September 2009	7
December 2009	7
March 2010	7
April 2010	7
May 2010	7

Month of Violation	Number of Violation
June 2010	7
July 2010	7
September 2010	7
November 2010	7

3.13. Section I.A. of the Permit contains an average weekly concentration effluent limit for BOD₅ of 45 mg/l. Between May 2006 and November 2010, Respondent violated the average weekly concentration effluent limit for BOD₅ seven times, constituting 49 violations. The violations are as follows:

Month of Violation	Number of Violation
May 2007	7
March 2008	7
April 2008	7
July 2008	7
March 2009	7
April 2009	7
March 2010	7

3.14. Section I.A. of the Permit contains a monthly average percent removal requirement for BOD₅ of 85%. Between March 2006 and November 2010, Respondent violated the monthly average percent removal requirement for BOD₅ 15 times, constituting 460 violations. The violations are as follows:

Month of Violation	Number of Violation
May 2006	31
September 2006	30
December 2006	31

Month of Violation	Number of Violation
March 2007	31
May 2007	31
April 2008	30
June 2008	30
July 2008	31
November 2008	30
March 2009	31
April 2009	30
May 2009	31
December 2009	31
March 2010	31
May 2010	31

3.15. Section I.A. of the Permit contains a maximum daily effluent loading limit for Total Residual Chlorine of 0.03 lbs/day. Between April 2007 and November 2010, Respondent violated the maximum daily effluent loading limit for Total Residual Chlorine five times, constituting five violations. The violations are as follows:

Month of Violation	Number of Violation
April 2008	1
March 2009	1
April 2009	1
May 2009	1
June 2009	1

3.16. Section I.A. of the Permit contains an average monthly effluent count limit for E. coli bacteria of 126/100ml. Between May 2006 and November 2010, Respondent violated the

average monthly effluent count limit for E. coli bacteria five times, constituting 155 violations.

The violations are as follows:

Month of Violation	Number of Violation
July 2006	31
December 2006	31
March 2007	31
March 2008	31
December 2009	31

3.17. Section I.A. of the Permit contains an instantaneous effluent count limit for E. coli bacteria of 406/100ml. Between May 2006 and November 2010, Respondent violated the instantaneous effluent count limit for E. coli bacteria seven times, constituting seven violations.

The violations are as follows:

Month of Violation	Number of Violation
December 2006	1
December 2007	1
March 2008	1
March 2009	1
April 2009	1
December 2009	1
October 2010	1

3.18. Section I.A. of the Permit contains an instantaneous effluent pH range limit of 6.5 to 9.0 standard units. Between May 2006 and November 2010, Respondent violated the instantaneous effluent pH range limit 24 times, constituting 24 violations. The violations are as follows:

Month of Violation	Number of Violation
May 2006	1
June 2006	1
July 2006	1
August 2006	1
November 2006	1
July 2007	1
May 2008	1
June 2008	1
July 2008	1
August 2008	1
September 2008	1
October 2008	1
November 2008	1
December 2008	1
April 2009	1
May 2009	1
June 2009	1
July 2009	1
September 2009	1
March 2010	1
May 2010	1
June 2010	1
July 2010	1
September 2010	1

3.19. Section I.A. of the Permit contains an average monthly loading effluent limit for TSS of 8 lbs/day. Between May 2006 and November 2010, Respondent violated the average monthly loading effluent limit for TSS 30 times, constituting 917 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2006	31
July 2006	31
September 2006	30
November 2006	30
March 2007	31
April 2007	30
May 2007	31
March 2008	31
April 2008	30
May 2008	31
June 2008	30
July 2008	31
November 2008	30
December 2008	31
March 2009	31
April 2009	30
May 2009	31
June 2009	30
July 2009	31
September 2009	30
December 2009	31
March 2010	31
April 2010	30
May 2010	31
June 2010	30
July 2010	31
August 2010	31
September 2010	30
October 2010	31
November 2010	30

3.20. Section I.A. of the Permit contains an average monthly concentration effluent limit for TSS of 30 mg/l. Between May 2006 and November 2010, Respondent violated the average monthly concentration effluent limit for TSS 20 times, constituting 610 violations. The violations are as follows:

Month of Violation	Number of Violations
May 2006	31
April 2007	30
May 2007	31
April 2008	30
June 2008	30
July 2008	31
December 2008	31
March 2009	31
April 2009	30
May 2009	31
June 2009	30
September 2009	30
December 2009	31
March 2010	31
April 2010	30
May 2010	31
June 2010	30
July 2010	31
September 2010	30
November 2010	30

3.21. Section I.A. of the Permit contains an average weekly loading effluent limit for TSS of 11 lbs/day. Between May 2006 and November 2010, Respondent violated the average

weekly loading effluent limit for TSS 25 times, constituting 175 violations. The violations are as follows:

Month of Violation	Number of Violation
May 2006	7
July 2006	7
March 2007	7
April 2007	7
May 2007	7
March 2008	7
April 2008	7
June 2008	7
July 2008	7
November 2008	7
December 2008	7
March 2009	7
April 2009	7
May 2009	7
June 2009	7
September 2009	7
December 2009	7
March 2010	7
April 2010	7
May 2010	7
June 2010	7
July 2010	7
August 2010	7
September 2010	7
November 2010	7

3.22. Section I.A. of the Permit contains an average weekly concentration effluent limit for TSS of 45 mg/l. Between May 2006 and November 2010, Respondent violated the average

weekly concentration effluent limit for TSS seven times, constituting 49 violations. The violations are as follows:

Month of Violation	Number of Violation
May 2007	7
June 2008	7
July 2008	7
March 2009	7
May 2010	7
June 2010	7
November 2010	7

3.23. 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 limitation ... in a permit issued” pursuant to CWA Section 402, 33 U.S.C. § 1342. Consequently under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act, as amended, 24 U.S.C. § 2461 note, Respondent 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 violation that occurred on or after March 15, 2004, through January 12, 2009, and \$16,000 per day for each violation that occurred after January 12, 2009.

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 \$51,000.

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: Robert Grandinetti
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:

FOR IDAHO DEPARTMENT OF CORRECTION:

April - 23 2012

Signature: 

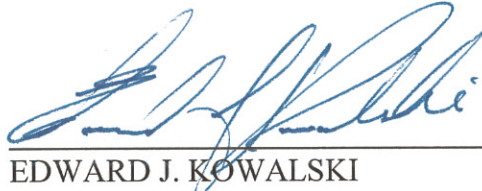
Print Name: Brent D Reinke

Title: Director

DATED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

5/9/2012



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 20th day of June, 2012.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

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Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of North Idaho Correctional Institute, Docket No.: CWA-10-2012-0016**, 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:

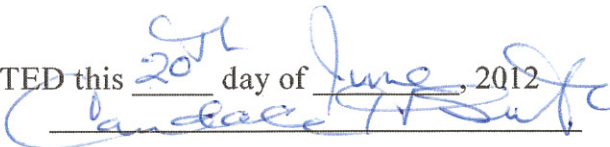
Mary Stroh Queitzsch, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

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:

Brent D. Reinke
Director
Idaho Department of Corrections
1299 N. Orchard Street, Suite 110
Boise, ID 83706

William Loomis, Esquire
Office of Attorney General
700 w. Jefferson Street
P.O. Box 83720
Boise, ID 83720

DATED this 20th day of June, 2012



Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10