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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the matter of:

CITY OF STITES

Idaho County, Idaho

Respondent.

)
) DOCKET NO. CWA-10-2000-0063

)
) CONSENT AGREEMENT AND FINAL
) ORDER

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA, Region 10.

1.2. 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 City of Stites, Idaho County, Idaho (“Respondent”) hereby agrees to issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1. On May 1, 2000, EPA initiated this proceeding against Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint.

2.2. The Complaint alleged that Respondent's violations of the CWA had subjected Respondent to penalties and proposed that Respondent be assessed an administrative civil penalty of \$12,000.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

2.4. 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 state of Idaho has been given an opportunity to consult with EPA regarding the assessment of an administrative civil penalty against Respondent.

2.5. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA has issued a public notice to inform the public of its intent to assess administrative penalties against Respondent and to invite public comment. EPA has received no public comments on this proceeding.

III. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

3.1. Respondent admits the jurisdictional allegations of the Complaint.

3.2. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

3.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

3.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

3.5. Except as provided in Paragraph 3.11 below, each party shall bear its own costs in bringing or defending this action.

3.6. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of ONE THOUSAND DOLLARS (\$1000.00). This penalty amount has been agreed upon in consideration of the statutory penalty factors identified in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

3.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in the foregoing paragraph plus all applicable interest on such penalty in accordance with the payment schedule set forth below:

a. Thirty (30) days after issuance of the Final Order Respondent shall pay the first of three installments; Respondent shall remit \$333.33;

b. No later than September 1, 2002, Respondent shall remit a second installment of \$373.33, includes interest at a rate of six (6) percent;

c. No later than September 1, 2003, Respondent shall remit the third installment of \$333.34, includes interest at a rate of six (6) percent.

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

Mellon Bank
EPA Region 10
P.O. Box 360903M

Pittsburgh, Pennsylvania 15251

Respondent shall note on the check the title and docket number of this case.

3.9. Respondent shall serve photocopies of each check on the Regional Hearing Clerk and Complainant at the following two addresses:

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

Office of Water
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop OW-136
Seattle, Washington 98101
Attn: Robert Grandinetti

3.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to an administrative action to collect payment under the federal Debt Collection Act of 1982, as amended, or to a civil action to collect the assessed penalty under the CWA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, 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 contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than thirty (30) days past due.

c. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty, interest, and monthly handling charges) attorney fees, 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.

STIPULATED AND AGREED this 25 day of July, 2001:

FOR THE CITY OF STITES

Howard Arlt
[Print name Howard Arlt]
City of Stites
Respondent

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

Cara Steiner-Riley
Cara Steiner-Riley
Assistant Regional Counsel
Complainant

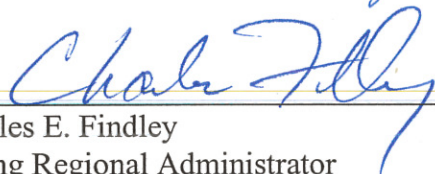
IV. FINAL ORDER

4.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in the Complaint. 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 and permits issued thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 31st day of July, 2001.



Charles E. Findley
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order" was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

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

A true and correct copy, by certified mail, return receipt requested:

Howard Arlt, Mayor
City of Stites
P.O. Box 300
Stites, Idaho 83552

Dated: August 1, 2001

Melissa Whitaker
Melissa Whitaker
U.S. EPA Region 10